TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 24

ALGERNON S. SCHAFER, PETITIONER,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

No. 25

EDWARD SCHAFER, PETITIONER,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

No. 26

LEONARD SCHAFER, PETITIONER,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 6, 1936.

CERTIORARI GRANTED MAY 18, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Caption omitted]

BEFORE U. S. BOARD OF TAX APPEALS

Docket No. 72370

ALGERNON S. SCHAFER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Petitioner: Eugene Untermyer, Esq.
For respondent: R. W. Wilson, Esq.

DOCKET ENTRIES

1933.

May 20. Petition received and filed. Taxpayer notified (Fee paid.)
May 20. Copy of petition served on General Counsel.
May 29. Notice of appearance of Eugene Untermyer as counsel filed.
July 1. Answer filed by General Counsel.
July 13. Copy of answer served on taxpayer.
Sept. 18. Order placing proceeding on Circuit Calendar for hearing in New York City entered.

1934.

Jan. 2. Hearing set for week of 2/5/34, New York, N. Y.
Feb. 28. Hearing had before Mr. Leech, Division 6, on merits. Consolidated with 72373-74. Stipulation of facts filed. Petitioner's brief due 3/30/34—reply 4/25/34. Commissioner's brief due 4/15/34.

[fol. 2]

Mar. 13. Transcript of hearing 2/28/34 filed.
Mar. 29. Brief filed by taxpayer 3/30/34 copy served.
Apr 16. Brief filed by General Counsel.
Apr. 21. Reply brief filed by taxpayer. 4/23/34 copy served.

1935.

Mar. 28. Findings of fact and opinion rendered—J. R. Leech, Division 6. Decision will be entered for respondent.

1935.

Mar. 30. Decision entered—Division 15, Eugene Black.
June 21. Stipulation for review by the Court of Appeals for the District of Columbia filed.
June 21. Petition for review by U. S. Court of Appeals for the District of Columbia with assignments of error filed by taxpayer.
June 21. Proof of service filed by taxpayer.
Aug. 6. Agreed statement of evidence lodged.
Aug. 6. Agreed præcipe filed.
Aug. 7. Agreed statement of evidence approved and ordered filed.
Aug. 20. Order enlarging time to Sept. 23, 1935 for transmission and delivery of record entered.

BEFORE U. S. BOARD OF TAX APPEALS

Docket No. 72373

EDWARD SCHÄFER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Petitioner: Eugene Untermyer, Esq.
For Respondent: R. W. Wilson, Esq.

DOCKET ENTRIES

1933.

May 20. Petition received and filed. Taxpayer notified. (Fee paid.)
May 20. Copy of petition served on General Counsel.
May 29. Notice of appearance of Eugene Untermyer as counsel filed.
July 1. Answer filed by General Counsel.
July 13. Copy of answer served on taxpayer.

[fol. 3]

Sept. 18. Order placing proceeding on Circuit Calendar for hearing in New York City entered.

DOCKET ENTRIES—Continued

1934.

Jan. 2. Hearing set 2/5/34, New York, N. Y.

Feb. 28. Hearing had before Mr. Leech, Division 6, on merits. Consolidated with 72370-74. Stipulation of facts filed. Petitioner's brief due 3/30/34—reply 4/25/34—Commissioner's brief 4/15/34.

Mar. 13. Transcript of hearing 2/28/34 filed.

Mar. 29. Brief filed by taxpayer. 3/30/34 copy served.

Apr. 16. Brief filed by General Counsel.

Apr. 21. Reply brief filed by taxpayer. 4/23/34 copy served.

1935.

Mar. 28. Findings of fact and opinion rendered—J. R. Leech, Division 6. Decision will be entered for respondent.

Mar. 30. Decision entered—Division 15, Eugene Black.

June 21. Stipulation for review by Court of Appeals for the District of Columbia filed.

June 21. Petition for review by U. S. Court of Appeals for the District of Columbia with assignments of error filed by taxpayer.

June 21. Proof of service filed by taxpayer.

Aug. 6. Agreed statement of evidence lodged.

Aug. 6. Agreed præcipe filed.

Aug. 7. Agreed statement of evidence approved and ordered filed.

Aug. 20. Order enlarging time to Sept. 23, 1935 for transmission and delivery of record entered.

BEFORE U. S. BOARD OF TAX APPEALS

Docket No. 72374

LEONARD SCHAFER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Petitioner: Eugene Untermyer, Esq.;
For Respondent: R. W. Wilson, Esq.

[fol. 4] DOCKET ENTRIES

1933.

May 20. Petition received and filed. Taxpayer notified. (Fee paid.)
May 20. Copy of petition served on General Counsel.
May 29. Notice of appearance of Eugene Untermyer as counsel filed.
July 1. Answer filed by General Counsel.
July 13. Copy of answer served on taxpayer.
Sept. 18. Order placing proceeding on Circuit Calendar for hearing in New York City entered.

1934.

Jan. 2. Hearing set for week of 2/5/34, New York, N. Y.
Feb. 28. Hearing had before Mr. Leech, Division 6, on merits. Consolidated with 72370-73. Stipulation of facts filed. Petitioner's brief due 3/30/34—reply 4/25/34—Commissioner's brief 4/15/34.
Mar. 13. Transcript of hearing 2/28/34 filed.
Mar. 29. Brief filed by taxpayer. 3/30/34 copy served.
Apr. 16. Brief filed by General Counsel.
Apr. 21. Reply brief filed by taxpayer. 4/23/34 copy served.

1935.

Mar. 28. Findings of fact and opinion rendered—J. R. Leech, Division 6. Decision will be entered for respondent.
Mar. 30. Decision entered—Division 15, Eugene Black.
June 21. Stipulation for review by Court of Appeals for the District of Columbia filed.

DOCKET ENTRIES—Continued

1935.

June 21. Petition for review by U. S. Court of Appeals for the District of Columbia with assignments of error filed by taxpayer.

June 21. Proof of service filed by taxpayer.

Aug. 6. Agreed statement of evidence lodged.

Aug. 6. Agreed præcipe filed.

Aug. 7. Agreed statement of evidence approved and ordered filed.

Aug. 20. Order enlarging time to Sept. 23, 1935 for transmission and delivery of record entered.

[fol. 5] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 72370

[Title omitted]

PETITION—Filed May 20, 1933

Algernon S. Schafer, the above-named petitioner, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency for the calendar year 1929 dated March 21, 1933, and initialled IT: AR: A-1 JBW-60D, and as a basis for this proceeding alleges as follows:

I. Your petitioner is an individual, and his post office address is No. One Wall Street, Borough of Manhattan, City of New York, N. Y.

II. The notice of deficiency, a copy of which is hereto attached and marked Exhibit A, was mailed to your petitioner under date of March 21, 1933.

III. The tax in dispute is income tax for the calendar year 1929 and is in the amount of $33,329.20.

IV. The determination of the tax set forth in said notice of deficiency is based on the following errors.

1. The disallowance of inventories of securities by the partnership of Schafer Bros. at market as of the beginning and end of the taxable year, the restoring of the value of

such securities to alleged cost, and the consequent increase of income of the partnership alleged to be subject to income tax for the calendar year 1929 in the amount of $511,667.

2. The disallowance as a deduction from the income of the partnership of Schafer Bros. subject to tax of bad debts aggregating $2500;

3. The consequent increase of income of your petitioner alleged to be subject to income tax for the calendar year 1929 in the amount of $171,867.52.

[fol. 6] V. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

A. As respects the inventorying of securities:

1. The copartnership of Schafer Bros. from in or about the year 1918 up to February 1, 1932, consisted of the three brothers, Leonard Schafer, Algernon S. Schafer (your petitioner herein) and Edward Schafer, all of whom were general partners. The original firm was founded by the father of the said partners in the year 1860 and said firm, as from time to time constituted, was at all times since its formation doing business in the City of New York.

2. Said firm was and at all times hereinbefore mentioned had been since about the year 1865 a member of the New York Stock Exchange. Since its formation it had conducted a general business as dealer and merchant in securities on commission and on margin, including as an essential part of its business the dealing in securities for the account of the partnership, and had at all times a suite of offices and an established place of business in the City of New York.

3. Since the year 1899 Leonard Schafer aforesaid had owned a seat on the New York Stock Exchange and at all times since the aforesaid partnership was formed in 1918 and up to February 1, 1932, said Leonard Schafer had been the floor member of the partnership, and the two remaining partners had been its office members and both actively engaged in the conduct of its business.

4. As an essential part of its business said partnership engaged in the business of a dealer and merchant in securities by dealing therein for its own account, in most part

through its own floor member, Leonard Schafer, and at other times through other brokers. This branch of its business was conducted under numerous separate accounts that appear on its books, including an account entitled "Error Account." Transactions effected in such accounts, including the Error Account aforesaid, were for the purpose and with the expectation of realizing a profit thereon within the immediate future as a dealer in securities by their rapid turnover, and none of said securities were acquired for investment purposes or with the expectation of holding the same as investments.

5. When it was desired to acquire securities for investment the same was not effected through the partnership [fol. 7] but for the account of the individual partners, and such securities were either withdrawn by them or credited to their separate capital accounts upon the books of the firm.

6. From time to time securities dealt in in the Error Account and other trading accounts, upon which the partnership anticipated the realization of profit at the time of acquisition, did not increase but diminished in value, in which event it became necessary, to carry out the purpose of the transaction, for the partnership to retain such securities for a period of time unanticipated at the time of their acquisition and wholly undesired, but always with the intention that said securities would be disposed of when an adequate price therefor could be obtained.

7. During the year 1929 the partnership, in the general course of its business, engaged in extensive trading operations in its various trading accounts, including the Error Account. Of the 16,738 shares on hand and inventoried at the beginning of the year 1929, 9,800 shares were sold during said calendar year. In the Error Account alone the partnership in 1929 traded in upwards of 72 different items or varieties of securities, purchased an aggregate of 107,500 shares of stock of such various securities and sold 92,500 shares thereof in the Error Account. The profits anticipated were adversely affected by the sharp decline in values on the New York Stock Exchange that occurred in the autumn of 1929, so that at the end of said year a number of securities remained in the Error Account for the reason

that the partnership had been unable to dispose thereof at prices deemed adequate during the course of such year.

8. All of the securities remaining in the Error Account on December 31, 1929, with the exception of 500 shares of New York Transportation Co. and 38 shares of Tidal Osage Oil, were disposed of by the partnership during the calendar year 1930, long prior to the time that said partnership or any member thereof had any intimation of the position the Government would endeavor to assert with respect to the issue in controversy herein.

9. In each and every year since in or about 1921 and up to February 1, 1932, said partnership had adopted a uniform practice of inventorying the securities in the Error Account and in the other trading accounts at their market values as of the end of each calendar month. This practice [fol. 8] was essential in a business of the nature conducted by the partnership. The firm would not have been able to comprehend its true financial position in a business of such fluctuating values as if it had relied upon cost, and the nature of its business compelled the frequent taking of inventories evidencing the true value of securities held, in order to enable the partners to appreciate where they stood and as a basis of the credit of the partnership. Such credit was essential to its business.

10. The partnership had at all times, since it adopted the practice of inventorying securities, consistently reflected such practice with respect to the Error Account and its other accounts in its tax reurns, and for the previous ten years income taxes upon its income (which was frequently enhanced by reason of the practice of inventorying securities above cost) were paid by the partners upon their distributive share of the profits so determined without any protest by the Government or any intimation that such method of inventorying the securities was improper or contrary to law.

11. The values at which the securities in said Error Account and the other trading accounts of the partnership were inventoried as of December 31, 1928 and December 31, 1929 were determined by the condition of the market for such securities as of said dates at the fair market values thereof, after full investigation and careful consideration by the members of said partnership. All of the securities so

held in the trading accounts, including the Error Account, were acquired for the purpose of realizing a profit upon the ultimate sale thereof in the course of the partnership's business as a dealer in securities, and none of said securities were held for the purpose of investment.

B. As respects the item of bad debts.

1. Your petitioner claims a proportionate deduction from his income subject to tax for bad debts of the partnership of Schafer Bros. aggregating $2500, for the following advances:

To one Harold Seeman	$1,000.00
To one Emil Kolb	1,000.00
And to one Reisman	500.00

These advances were all made by Edward Schafer, for the account of the partnership in the course of its business [fol. 9] and were all ascertained to be worthless and uncollectable in the year 1929.

Wherefore your petitioner prays that this Board may hear this appeal and redetermine what, if any, amount your petitioner is legally liable for as deficiency tax for the year 1929, the petitioner, however, insisting and claiming that he is not liable for any deficiency tax for said period, exceeding such additional amount of tax as may be due in respect to the amounts specified in paragraphs numbered "2" and "3" contained in the deficiency letter hereto annexed.

Your petitioner hereby designates as his post office address to which notices in this proceeding be sent as Algernon S. Schafer, care of Eugene Untermyer, No. 30 Pine Street, New York City, N. Y.

Dated, New York, May 17, 1933.

Algernon S. Schafer. Eugene Untermyer, Attorney for Petitioner, 30 Pine Street, New York City, N. Y.

Duly sworn to by Algernon S. Schafer. Jurat omitted in printing.

[fol. 10] EXHIBIT "A" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Mar. 21, 1933.

Mr. Algernon S. Schafer, 120 Broadway, New York, New York.

SIR:

You are advised that the determination of your tax liability for the year 1929 disclosed a deficiency of $33,329.20 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the inclosed form, or on the date assessment is made, whichever is earlier; Whereas if this form is not filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by W. T. Sherwood, Acting Deputy Commissioner.

Inclosures: Statement. Form 870.

[fol. 11] Statement

IT:AR:A-1.
JBW-60D.

In re Mr. Algernon S. Schafer, 120 Broadway, New York, New York

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1929	$35,391.38	$2,062.18	$33,329.20

The deficiency shown herein is based upon the report dated June 30, 1931 prepared by Internal Revenue Agent John J. Crowley, Jr., and transmitted to you under date of August 4, 1931, which report is made a part of this letter.

Careful consideration has been accorded your protest dated October 13, 1931, in connection with the findings of the examining officer, and the information submitted at conferences held in the office of the internal revenue agent in charge under date of November 4, 1931 and in this office under date of November 16, 1932.

The adjustments made and computation of tax follow:

Net income as shown on the return		$38,040.21
Plus.		
1. Partnership income increased	$171,867.52	
2. Loss from estate disallowed	991.95	
3. Additional profit on sale of securities	1,920.84	
		174,780.31
Net income adjusted		$212,820.52

Explanation of Changes

1. Income received from partnership of Schafer Brothers increased due to disallowing inventory to the partnership at "cost or market whichever is lower" in accordance with G. C. M. 9656—IT:Rev. Bulletin X-33.

2. Loss from Estate of S. M. Schafer represents a loss covering operating and upkeep expenses of property held [fol. 12] in estate properly chargeable to the corpus. It is, therefore, disallowed.

3. Profit on sales of securities increased due to your having computed profit on a joint account by inventorying at "cost or market whichever is lower", which is not allowable. The additional profit is based on cost and is determined as follows:

E. S. #2 Account—⅓ Interest

Inventory of securities at end of year—cost	$159,762.50
Inventory of securities at end of year—claimed	154,000.00
Excess of cost over market	$5,762.50
Your one-third interest	$1,920.84

NOTE.—Profit on securities sold which were held more than two years has been transferred to capital net gain in the amount of $51,609.40.

Consent which will expire on June 30, 1934, except as extended by the provisions of section 277 of the Revenue Act of 1928, is on file for the year 1929.

Computation of Tax

Total net income adjusted		$212,820.52
Less:		
Capital net gain included		51,609.40
Ordinary net income adjusted		$161,211.12
Less:		
Dividends	$17,151.59	
Personal exemption and credit for dependents	3,900.00	
		21,051.59
Net income subject to normal tax		$140,159.53
Normal tax at ½% on $4,000.00		$20.00
Normal tax at 2% on $4,000.00		80.00
Normal tax at 4% on $132,159.53		5,286.38
Surtax on $161,211.12		23,902.22
Tax at 12½% on capital net gain of $51,609.40		6,451.18
Total		$35,739.78

[fol. 13]

Brought forward	$35,739.78
Less:	
Earned income credit on $27,359.95	348.40
Income tax liability	$35,391.38
Income tax previously assessed, account #311593	2,062.18
Deficiency in tax	$33,329.20

[File endorsement omitted.]

BEFORE UNITED STATES BOARD OF TAX APPEALS

No. 72370

[Title omitted]

ANSWER—Filed July 1, 1933

Comes now the respondent by his attorney, E Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and in answer to the petition of the petitioner, admits, denies and alleges as follows:

I, II and III. Admits the allegations contained in paragraphs one, two and three of the petition.

IV. (1), (2) and (3) Denies that the respondent committed errors as alleged in sub-paragraphs (1), (2) and (3) of paragraph four of the petition.

V. (1), (2) and (3) Admits the allegations contained in sub-paragraphs (1), (2) and (3) of paragraph five of the petition.

V. (4) to (11) inc. Has insufficient information to form a belief as to the allegations contained in sub-paragraphs (4) to (11) inc. of paragraph five of the petition, and hence denies the same.

[fol. 14] V. (B) (1) Denies the allegations contained in sub-paragraph (B) (1) of paragraph five of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and the Commissioner's determination of deficiency be approved.

(Signed) E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue. DeWitt M. Evans, Special Attorney, Bureau of Internal Revenue, Of Counsel.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 72373

[Title omitted]

PETITION—Filed May 20, 1933

Edward Schafer, the above-named petitioner, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency for the calendar year 1929, dated March 21, 1933, and initialed IT:AR:A-1 JBW-60D, and as a basis for this proceeding alleges as follows:

I. Your petitioner is an individual, and his post office address is No. One Wall Street, Borough of Manhattan, City of New York, N. Y.

II. The notice of deficiency, a copy of which is hereto attached and marked Exhibit A, was mailed to your petitioner under date of March 21, 1933.

III. The tax in dispute is income tax for the calendar year 1929 and is in the amount of $33,423.09.

IV. The determination of the tax set forth in said notice of deficiency is based on the following errors.

[fol. 15] 1. The disallowance of inventories of securities by the partnership of Schafer Bros. at market as of the beginning and end of the taxable year, the restoring of the value of such securities to alleged cost, and the consequent increase of income of the partnership alleged to be subject to income tax for the calendar year 1929 in the amount of $511,667.

2. The disallowance as a deduction from the income of the partnership of Schafer Bros. subject to tax of bad debts aggregating $2,500;

3. The consequent increase of income of your petitioner alleged to be subject to income tax for the calendar year 1929 in the amount of $175,297.28.

V. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

A. As respects the inventorying of securities:

1. The copartnership of Schafer Bros. from in or about the year 1918 up to February 1, 1932, consisted of the three brothers, Leonard Schafer, Edward Schafer (your petitioner herein) and Algernon S. Schafer, all of whom were general partners. The original firm was founded by the father of the said partners in the year 1860 and said firm, as from time to time constituted, was at all times since its formation doing business in the City of New York.

2. Said firm was and at all times hereinbefore mentioned had been since about the year 1865 a member of the New York Stock Exchange. Since its formation it had conducted a general business as dealer and merchant in securities on commission and on margin, including as an essential part of its business the dealing in securities for the account of the partnership, and had at all times a suite of offices and an established place of business in the City of New York.

3. Since the year 1899 Leonard Schafer aforesaid had owned a seat on the New York Stock Exchange and at all times since the aforesaid partnership was formed in 1918 and up to February 1, 1932, said Leonard Schafer had been the floor member of the partnership, and the two remaining partners had been its office members and both actively engaged in the conduct of its business.

4. As an essential part of its business said partnership engaged in the business of a dealer and merchant in securi- [fol. 16] ties by dealing therein for its own account, in most part through its own floor member, Leonard Schafer, and at other times through other brokers. This branch of its business was conducted under numerous separate accounts that appear on its books, including an account entitled "Error Account". Transactions effected in such accounts, including the Error Account aforesaid were for the purpose and with the expectation of realizing a profit thereon within the immediate future as a dealer in securities by their rapid turnover, and none of said securities were acquired for investment purposes or with the expectation of holding the same as investments.

5. When it was desired to acquire securities for investment the same was not effected through the partnership but for the account of the individual partners, and such securities were either withdrawn by them or credited to their separate capital accounts upon the books of the firm.

6. From time to time securities dealt in in the Error Account and other trading accounts, upon which the partnership anticipated the realization of profit at the time of acquisition, did not incease but diminished in value, in which event it became necessary, to carry out the purpose of the transaction, for the partnership to retain such securities for a period of time unanticipated at the time of their acquisition and wholly undesired, but always with the intention that said securities would be disposed of when an adequate price therefor could be obtained.

7. During the year 1929 the partnership, in the general course of its business, engaged in extensive trading operations in its various trading accounts, including the Error Account. Of the 16,738 shares on hand and inventoried at the beginning of the year 1929, 9,800 shares were sold during said calendar year. In the Error Account alone the partnership in 1929 traded in upwards of 72 different items or varieties of securities, purchased an aggregate of 107,500 shares of stock of such various securities and sold 92,500 shares thereof in the Error Account. The profits anticipated were adversely affected by the sharp decline in values on the New York Stock Exchange that occurred in the autumn of 1929, so that at the end of said year a number of securities remained in the Error Account for the reason that the partnership had been unable to dispose [fol. 17] thereof at prices deemed adequate during the course of such year.

8. All of the securities remaining in the Error Account on December 31, 1929, with the exception of 500 shares of New York Transportation Co. and 38 shares of Tidal Osage Oil, were disposed of by the partnership during the calendar year 1930, long prior to the time that said partnership or any member thereof had any intimation of the position the Government would endeavor to assert with respect to the issue in controversy herein.

9. In each and every year since in or about 1921 and up to February 1, 1932, said partnership had adopted a uni-

form practice of inventorying the securities in the Error Account and in the other trading accounts at their market values as of the end of each calendar month. This practice was essential in a business of the nature conducted by the partnership. The firm would not have been able to comprehend its true financial position in a business of such fluctuating values as if it had relied upon cost, and the nature of its business compelled the frequent taking of inventories evidencing the true value of securities held, in order to enable the partners to appreciate where they stood and as a basis of the credit of the partnership. Such credit was essential to its business.

10. The partnership had at all times, since it adopted the practice of inventorying securities, consistently reflected such practice with respect to the Error Account and its other accounts in its tax returns, and for the previous ten years income taxes upon its income (which was frequently enhanced by reason of the practice of inventorying securities above cost) were paid by the partners upon their distributive share of the profits so determined without any protest by the Government or any intimation that such method of inventorying the securities was improper or contrary to law.

11. The values at which the securities in said Error Account and the other trading accounts of the partnership were inventoried as of December 31, 1928 and December 31, 1929 were determined by the condition of the market for such securities as of said dates at the fair market values thereof, after full investigation and careful consideration by the members of said partnership. All of the [fol. 18] securities so held in the trading accounts, including the Error Account, were acquired for the purpose of realizing a profit upon the ultimate sale thereof in the course of the partnership's business as a dealer in securities, and none of said securities were held for the purpose of investment.

B. As respects the item of bad debts.

1. Your petitioner claims a proportionate deduction from his income subject to tax for bad debts of the partnership of Schafer Bros. aggregating $2,500, for the following advances:

To one Harold Seaman $1,000.00
To one Emil Kolb 1,000.00
And to one Reisman 500.00

These advances were all made by your petitioner for the account of the partnership in the course of its business and were all ascertained to be worthless and uncollectible in the year 1929.

Wherefore, your petitioner prays that this Board may hear this appeal and redetermine what, if any, amount your petitioner is legally liable for as deficiency tax for the year 1929, the petitioner, however, insisting and claiming that he is not liable for any deficiency tax for said period, exceeding such additional amount of tax as may be due in respect to the amounts specified in paragraphs numbered "2" and "3" contained in the deficiency letter hereto annexed.

Your petitioner hereby designates as his post office address to which notices in this proceeding be sent as Edward Schafer, care of Eugene Untermyer, No. 30 Pine Street, New York City, N. Y.

Dated, New York, May 17, 1933.

Edward Schafer. Eugene Untermyer, Attorney for Petitioner, 30 Pine Street, New York City, N. Y.

[fol. 19] *Duly sworn to by Edward Schafer. Jurat omitted in printing.*

EXHIBIT "A" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Mar. 21, 1933.

Mr. Edward Schafer, 120 Broadway, New York, New York.

SIR:

You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of $33,423.09, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the inclosed form, or on [fol. 20] the date assessment is made, whichever is earlier; whereas if this form is not filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by W. T. Sherwood, Acting Deputy Commissioner.

Inclosures: Statement, Form 870.

Statement

In re Mr. Edward Schafer, 120 Broadway, New York, New York

Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1929.....	$36,395.13	$2,972.04	$33,423.09

The deficiency shown herein is based upon the report dated June 30, 1931, prepared by Internal Revenue Agent John J. Crowley, Jr., and transmitted to you under date of August 4, 1931, which report is made a part of this letter.

Careful consideration has been accorded your protest dated October 13, 1931, in connection with the findings of the examining officer, and the information submitted at conferences held in the office of the internal revenue agent in charge under date of November 4, 1931, and in this office under date of November 16, 1932.

The adjustments made and computation of tax follow:

Net income reported on the return		$44,335.36
Plus:		
1. Partnership income increased	$175,297.28	
2. Loss from estate disallowed	991.95	
3. Additional profit on sale of securities	1,920.83	178,210.06
Net income adjusted		$222,545.42

[fol. 21] Explanation of Changes

1. Income received from partnership of Schafer Brothers increased due to disallowing to the partnership inventory at "cost or market whichever is lower" in accordance with G. C. M. 9656—IT: Rev. Bulletin X-33.

2. Loss from Estate of S. M. Schafer represents loss covering operating and upkeep expenses of property held in estate. It is disallowed since it is properly chargeable to corpus of the estate. See T. D. 3668—Cumulative Bulletin IV-1-191.

3. Profit on sales of securities increased due to your having computed profit on a joint account by inventorying at "cost or market whichever is lower," which is not allowable. The additional profit is based on cost and is determined as follows:

E. S. #2 Account—1/3 Interest

Inventory of securities at end of year—cost	$159,762.50
Inventory of securities at end of year—claimed	154,000.00
Excess of cost over market	$5,762.50
Your one-third interest	$1,920.83

NOTE.—Profit on securities sold, which were held for over two years, has been transferred to capital net gain in the amount of $63,018.50.

Consent which will expire on June 30, 1934, except as extended by the provisions of section 277 of the Revenue Act of 1928, is on file for the year 1929.

Computation of Tax

Total net income adjusted		$222,545.42
Less:		
Capital net gain included		63,018.50
Ordinary net income adjusted		$159,526.92
Less:		
Dividends	$17,605.84	
Personal exemption and credit for dependent	3,900.00	21,505.84
Net income subject to normal tax		$138,021.08
[fol. 22] Normal tax at ½% on $4,000.00		20.00
Normal tax at 2% on $4,000.00		80.00
Normal tax at 4% on $130,021.08		5,200.84
Surtax on $159,526.92		23,565.38
Tax at 12½% on capital net gain of $63,018.50		7,877.31
Total		$36,743.53
Brought forward		$36,743.53
Less:		
Earned income credit of $27,359.95		348.40
Income tax liability		$36,395.13
Income tax previously assessed, account #311594		2,972.04
Deficiency in tax		$33,423.09

[File endorsement omitted]

BEFORE UNITED STATES BOARD OF TAX APPEALS

No. 72373

[Title omitted]

ANSWER—Filed July 1, 1933

Comes now the respondent by his attorney, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and in answer to the petition of the petitioner, admits, denies and alleges as follows:

I, II and III. Admits the allegations contained in paragraphs one, two and three of the petition.

IV. (1), (2) and (3) Denies that the respondent committed errors as alleged in sub-paragraphs (1), (2) and (3) of paragraph four of the petition.

[fol. 23] V. A (1), (2) and (3) Admits the allegations contained in sub-paragraphs A (1), (2) and (3) of paragraph five of the petition.

V. A (4) to (11) Has insufficient information to form a belief as to the allegations contained in sub-paragraphs A (4) to (11) inc. of paragraph five of the petition, and hence denies the same.

V. B (1) Denies the allegations contained in paragraph five (B) (1) of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and the Commissioner's determination of deficiency be approved.

(Signed) E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue. DeWitt M. Evans, Special Attorney, Bureau of Internal Revenue, of Counsel.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 72374

[Title omitted]

PETITION—Filed May 20, 1933

Leonard Schafer, the above-named petitioner, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency for the calendar year 1929, dated March 21, 1933, and initialled IT:AR:A-1 JBW-60D, and as a basis for this proceeding alleges as follows:

I. Your petitioner is an individual, and his post office address is No. 50 Broad Street, Borough of Manhattan, City of New York, N. Y.

[fol. 24] II. The notice of deficiency, a copy of which is hereto attached and marked Exhibit A, was mailed to your petitioner under date of March 21, 1933.

III. The tax in dispute is income tax for the calendar year 1929 and is in the amount of $32,681.97.

IV. The determination of the tax set forth in said notice of deficiency is based on the following errors.

1. The disallowance of inventories of securities by the partnership of Schafer Bros. at market as of the beginning and end of the taxable year, the restoring of the value of such securities to alleged cost, and the consequent increase of income of the partnership alleged to be subject to income tax for the calendar year 1929 in the amount of $511,667.

2. The disallowance as a deduction from the income of the partnership of Schafer Bros. subject to tax of bad debts aggregating $2500;

3. The consequent increase of income of your petitioner alleged to be subject to income tax for the calendar year 1929 in the amount of $167,002.20.

V. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

A. As respects the inventorying of securities:

1. The copartnership of Schafer Bros. from in or about the year 1918 up to February 1, 1932, consisted of the three brothers, Edward Schafer, Leonard Schafer (your petitioner herein) and Algernon S. Schafer, all of whom were general partners. The original firm was founded by the father of the said partners in the year 1860 and said firm, as from time to time constituted, was at all times since its formation doing business in the City of New York.

2. Said firm was and at all times hereinbefore mentioned had been since about the year 1865 a member of the New York Stock Exchange. Since its formation it had conducted

a general business as dealer and merchant in securities on commission and on margin, including as an essential part of its business the dealing in securities for the account of the partnership, and had at all times a suite of offices and an established place of business in the City of New York.

3. Since the year 1899 your petitioner had owned a seat on the New York Stock Exchange and at all times since the [fol. 25] aforesaid partnership was formed in 1918 and up to February 1, 1932, your petitioner had been the floor member of the partnership, and the two remaining partners had been its office members and both actively engaged in the conduct of its business.

4. As an essential part of its business said partnership engaged in the business of a dealer and merchant in securities by dealing therein for its own account, in most part through its own floor member, your petitioner, and at other times through other brokers. This branch of its business was conducted under numerous separate accounts that appear on its books, including an account entitled "Error Account". Transactions effected in such accounts, including the Error Account aforesaid, were for the purpose and with the expectation of realizing a profit thereon within the immediate future as a dealer in securities by their rapid turnover, and none of said securities were acquired for investment purposes or with the expectation of holding the same as investments.

5. When it was desired to acquire securities for investment the same was not effected through the partnership but for the account of the individual partners, and such securities were either withdrawn by them or credited to their separate capital accounts upon the books of the firm.

6. From time to time securities dealt in in the Error Account and other trading accounts, upon which the partnership anticipated the realization of profit at the time of acquisition, did not increase but diminished in value, in which event it became necessary, to carry out the purpose of the transaction, for the partnership to retain such securities for a period of time unanticipated at the time of their acquisition and wholly undesired, but always with the intention that said securities would be disposed of when an adequate price therefore could be obtained.

7. During the year 1929 the partnership, in the general course of its business, engaged in extensive trading operations in its various trading accounts, including the Error Account. Of the 16,738 shares on hand and inventoried at the beginning of the year 1929, 9,800 shares were sold during said calendar year. In the Error Account alone the partnership in 1929 traded in upwards of 72 different items or varieties of securities, purchased an aggregate of 107,500 shares of stock of such various securities and sold 92,500 [fol. 26] shares thereof in the Error Account. The profits anticipated were adversely affected by the sharp decline in values on the New York Stock Exchange that occurred in the autumn of 1929, so that at the end of said year a number of securities remained in the Error Account for the reason that the partnership had been unable to dispose thereof at prices deemed adequate during the course of such year.

8. All of the securities remaining in the Error Account on December 31, 1929, with the exception of 500 shares of New York Transportation Co. and 38 shares of Tidal Osage Oil, were disposed of by the partnership during the calendar year 1930, long prior to the time that said partnership or any member thereof had any intimation of the position the Government would endeavor to assert with respect to the issue in controversy herein.

9. In each and every year since in or about 1921 and up to February 1, 1932, said partnership had adopted a uniform practice of inventorying the securities in the Error Account and in the other trading accounts at their market values as of the end of each calendar month. This practice was essential in a business of the nature conducted by the partnership. The firm would not have been able to comprehend its true financial position in a business of such fluctuating values as if it had relied upon cost, and the nature of its business compelled the frequent taking of inventories evidencing the true value of securities held, in order to enable the partners to appreciate where they stood and as a basis of the credit of the partnership. Such credit was essential to its business.

10. The partnership had at all times, since it adopted the practice of inventorying securities, consistently reflected such practice with respect to the Error Account and

its other accounts in its tax returns, and for the previous ten years income taxes upon its income (which was frequently enhanced by reason of the practice of inventorying securities above cost) were paid by the partners upon their distributive share of the profits so determined without any protest by the Government or any intimation that such method of inventorying the securities was improper or contrary to law.

11. The values at which the securities in said Error Account and the other trading accounts of the partnership were inventoried as of December 31, 1928 and December 31, 1929, were determined by the condition of the market [fol. 27] for such securities as of said dates at the fair market values thereof, after full investigation and careful consideration by the members of said partnership. All of the securities so held in the trading accounts, including the Error Account, were acquired for the purpose of realizing a profit upon the ultimate sale thereof in the course of the partnership's business as a dealer in securities, and none of said securities were held for the purpose of investment.

B. As respects the item of bad debts.

1. Your petitioner claims a proportionate deduction from his income subject to tax for bad debts of the partnership of Schafer Bros. aggregating $2500, for the following advances:

To one Harold Seaman	$1,000.00
To one Emil Kolb	1,000.00
And to one Reisman	500.00

These advances were all made by Edward Schafer for the account of the partnership in the course of its business and were all ascertained to be worthless and uncollectible in the year 1929.

Wherefore, your petitioner prays that this Board may hear this appeal and redetermine what, if any, amount your petitioner is legally liable for as deficiency tax for the year 1929, the petitioner, however, insisting and claiming that he is not liable for any deficiency tax for said period, exceeding such additional amount of tax as may be due in respect to the amounts specified in paragraphs numbered "2" and "3" contained in the deficiency letter hereto annexed.

Your petitioner hereby designates as his post office address to which notices in this proceeding be sent as Leonard Schafer, care of Eugene Untermyer, No. 30 Pine Street, New York City, N. Y.

Dated, New York, May 18th, 1933.

Leonard Schafer. Eugene Untermyer, Attorney for Petitioner, 30 Pine Street, New York City, N. Y.

[fol. 28] *Duly sworn to by Leonard Schafer. Jurat omitted in printing.*

EXHIBIT "A" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Mar. 21, 1933.

Mr. Leonard Schafer, 120 Broadway, New York, New York.

SIR:

You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of $32,681.97 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period [fol. 29] terminates thirty days after filing the inclosed form, or on the date assessment is made, whichever is earlier; whereas if this form is not filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by W. T. Sherwood, Acting Deputy Commissioner.

Inclosures: Statement Form 870.

Statement

IT:AR:A-1.
JBW-60D.

In re Mr. Leonard Schafer, 120 Broadway, New York, New York

Income Tax Liability

Year	Income Tax Liability	Income Tax Liability	Deficiency
1929	$35,851.88	$3,169.91	$32,681.97

The deficiency shown herein is based upon the report dated June 30, 1931 prepared by Internal Revenue Agent John J. Crowley, Jr., and transmitted to you under date of August 4, 1931, which report is made a part of this letter.

Careful consideration has been accorded your protest dated October 13, 1931, in connection with the findings of the examining officer, and the information submitted at conferences held in the office of the internal revenue agent in charge under date of November 4, 1931 and in this office under date of November 16, 1932.

[fol. 30] The adjustments made and computation of tax follow:

Net income as shown on the return		$45,306.64
Plus:		
1. Partnership income increased	$167,002.20	
2. Loss from estate disallowed	991.95	
3. Additional profit on sale of securities	1,920.83	
		169,914.98
Net income adjusted		$215,221.62

Explanation of Changes

1. Income received from partnership of Schafer Brothers increased due to disallowing inventory to the partnership at "cost or market whichever is lower" in accordance with G. C. M. 9656—IT:Rev. Bulletin X-33.

2. Loss from Estate of S. M. Schafer represents loss covering operating and upkeep expenses of property held in estate. It is disallowed since it is properly chargeable to

corpus of the estate. See T. D. 3668—Cumulative Bulletin IV-1-191.

3. Profit on sales of securities increased due to your having computed profit on a joint account by inventorying at "cost or market, whichever is lower" which is not allowable. The additional profit is based on cost and is determined as follows:

E. S. #2 Account—1/3 Interest

Inventory of securities at end of year—cost	$159,762.50
Inventory of securities at end of year—claimed	154,000.00
Excess of cost over market	$5,762.50
Your one-third interest	$1,920.83

NOTE.—Profit on securities sold which were held over two years has been transferred to capital net gain in the amount of $52,796.80.

Consent which will expire on June 30, 1934, except as extended by the provisions of section 277 of the Revenue Act of 1928 is on file for the year 1929.

[fol. 31] Computation of Tax

Total net income adjusted		$215,221.62
Less:		
Capital net gain included		52,796.80
Ordinary net income adjusted		$162,424.82
Less:		
Dividends	$16,931.85	
Personal exemption	3,500.00	
		20,431.85
Net income subject to normal tax		$141,992.97
Normal tax at ½% on $4,000.00		$20.00
Normal tax at 2% on $4,000.00		80.00
Normal tax at 4% on $133,992.97		5,359.72
Surtax on $162,424.82		24,144.96
Tax at 12½% on capital net gain of $52,796.80		6,599.60
Total		$36,204.28
Brought forward		$36,204.28

Less:	
Earned income credit on $27,359.95	352.40
Income tax liability	$35,851.88
Income tax previous-assessed, account #311595	3,169.91
Deficiency in tax	$32,681.97

[File endorsement omitted]

[fol. 32] BEFORE UNITED STATES BOARD OF TAX APPEALS

No. 72374

[Title omitted]

ANSWER—Filed July 1, 1933

Come now the respondent by his Attorney, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and in answer to the petition of the petitioner, admits, denies and alleges as follows:

I, II and III. Admits the allegations contained in paragraphs one, two and three of the petition.

IV. (1), (2) and (3) Denies that the respondent committed errors as alleged in sub-paragraphs (1), (2) and (3) of paragraph four of the petition.

V. A (1), (2) and (3) Admits the allegations contained in sub-paragraphs A (1), (2) and (3) of paragraph five of the petition.

V. A (4) to (11) inc. Has insufficient information to form a belief as to the allegations contained in sub-paragraphs A (4) to (11) inc. of paragraph five of the petition, and hence denies the same.

V. B (1) Denies the allegations contained in paragraph five B (1) of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and the Commissioner's determination of deficiency be approved.

(Signed) E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue. DeWitt M. Evans, Special Attorney, Bureau of Internal Revenue. Of Counsel.

[fol. 33] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 72370, 72373, 72374

ALGERNON S. SCHAFER, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

EDWARD SCHAFER, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

LEONARD SCHAFER, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Findings of Fact and Opinion—Promulgated March 28, 1935

A partnership, in addition to its business as a dealer in securities, and with no relation to its customers in that branch of its business, made substantial purchases of securities for the purpose of resale, to any buyer, at a profit, upon an expected rise in the market. Neither the relative amount nor the necessity of that additional business to its business as such a dealer, was established. Held, respondent's determination that such partnership is not a dealer in securities within article 105, Regulations 74, as to such additional branch of its business, and is, therefore, not entitled to inventory, at market value, the securities pur-

chased in connection with that additional business and carried in a special account, will not be disturbed.

Eugene Untermyer, Esq., for the petitioner.
R. W. Wilson, Esq., for the respondent.

These consolidated proceedings seek redetermination of income tax deficiencies, for the calendar year 1929 in the amount of $33,329.20 against Algernon S. Schafer, $33,423.09 against Edward Schafer, and $32,681.97 against Leonard Schafer.

[fol. 34] During 1929 petitioners were members of the partnership of Schafer Bros. The disputed taxes are based upon their respective incomes as such parties. They assign as error: (1) The respondent's determination that the partnership of Schafer Bros. was not entitled to inventory at market value, securities on hand at the beginning and end of the year 1929, and (2) that the partnership was not entitled to deduct, in same year, alleged bad debts aggregating $2,500, resulting in a substantial increase in the net income each petitioner derived from the partnership. At the hearing, the parties limited the first issue to the sole question of whether the partnership was entitled to inventory securities in a so-called "Error Account" on the partnership books at the beginning and end of the year 1929. A portion of the facts has been stipulated.

Findings of Fact

From 1918 to February 1932, the petitioners, residents of New York, were general partners with a one-third interest each, in the partnership of Schafer Bros., which had its principal office at 120 Broadway, New York City. The original firm of Schafer Bros. was founded in 1860 by petitioners' father and, as constituted from time to time, it has conducted a general brokerage business in New York City. Since about 1865 the firm has been a member of the New York Stock Exchange.

Leonard Schafer has owned a New York Stock Exchange seat since 1899. During the existence of the partnership involved in these proceedings, including 1929, Leonard Schafer was the floor member while the other two petitioners were the office members. Leonard Schafer was also a specialist in one or two stock issues. All three petitioners

were actively engaged in the partnership business, which, throughout the period from 1918 to 1932, included several activities in relation to securities. The partnership was a dealer and merchant in securities on commission and on margin. Such business activity comprised the execution of orders for purchase or sale of securities by its customers either on the Exchange, the Curb, or wherever the particular securities were listed. From 1925 through 1929 the partnership participated in a great number of syndicate and underwriting operations. Also, as a part of its business [fol. 35] activities, but with no relation to its customers' accounts nor to the execution of orders for its customers, the partnership has always, to some extent, bought and sold securities for its own account.

Beginning in 1925 or 1926 and continuing through 1929, the partnership traded in securities for its own account, much more extensively than had been its practice prior to 1925. Such trading was conducted through orders executed by Leonard Schafer or other brokers and had no relation to or connection with the accounts of the partnership's customers, but were purchased in expectation of a rise in the market price and for the purpose of resale, to any buyer, at a profit for the partnership's own account. Such securities were not purchased for investment. Sales of those securities were made through orders given Leonard Schafer or other brokers and the identity of the purchasers was not known. Such purchases and sales were entered in the so-called "Error Account" (the name having no significance), which was just an old account carried on the books and used for the partnership's own transactions in securities. During 1929, the partnership purchased 107,500 shares and sold 92,500 shares of 72 different issues of securities, entered in the "Error Account." The number of such securities carried at the close of 1929 was unusually large, due to the drop in the market and the inability to sell at a profit. However, all but a comparatively few shares were sold during 1930.

Prior to 1925 the partnership carried its own securities in the "Error Account" at cost, but beginning with that year, and including 1929, it has inventoried, at fair market

value, the securities held for its own account at the beginning and end of the year. The change was made as a matter of business policy, but with knowledge of the effect of the taxing statutes. The New York Stock Exchange, since about 1923, has required its members to inventory securities for the purpose of certain Exchange questionnaires.

At the close of business on December 31, 1928 and 1929, the partnership owned, and carried in the "Error Account," the securities specified and described in Exhibits "B" and "C," respectively (attached to the stipulation and included herein by reference), which exhibits also set forth [fol. 36] the actual cost and the fair market value of such securities, totaling as follows:

	Actual cost	Fair market value	Cost over market
December 31, 1928....	$332,982	$298,732	$34,250
December 31, 1929....	1,527,882	981,965	545,917

The Commissioner determined that the partnership was not a dealer with respect to such securities and that they must be carried at cost. He disallowed the use of inventories and increased the partnership income by the amount of $511,667, the difference between cost over market value at the beginning and the end of the year 1929.

Harold Seaman, a boat builder, asked Edward Schafer for a loan of $1,000 by the firm. Schafer, having granted Seaman many favors, advanced the $1,000 although Seaman was not worth anything, Edward Schafer, acting for the firm, loaned Emil Kolb, a mechanic and inventor, $1,000 upon the latter's request, and Schafer has been giving Kolb money ever since. Edward Schafer loaned $500 to one Reissler, a poor man in the radio business. Subsequently Reissler went through bankruptcy proceedings. At various times, including the year 1929, Schafer made several requests for repayment of the three loans, but all three debtors were insolvent and no part of the loans has ever been collected.

Opinion

Leech:

The respondent has determined that, as to the securities carried in the so-called "Error Account," the Schafer Bros.

partnership was not, during 1929, a "dealer in securities" within the meaning of article 105, Regulations 74[1] promulgated by the explicit authority of section 22 (c) of the [fol. 37] Revenue Act of 1928,[2] and was not entitled, under that statute and regulation, to inventory, at market, its securities carried in that account in computing its income

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[1]Art. 105. Inventories by dealers in securities.—A dealer in securities who in his books of account regularly inventories unsold securities on hand other—

(a) At cost;

(b) At cost or market, whichever is lower; or

(c) At market value,

may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another be authorized by the Commissioner. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation and not in the course of an established business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule.

[2] (c) Inventories.—Whenever in the opinion of the Commissioner to use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

tax for that year. The first issue here involves only the question of whether, upon this record, that determination shall be reversed.

That regulation has been approved as a reasonable application of the statute. Northeastern Surety Co., 29 B. T. A. 297; Oil Shares, Inc., 29 B. T. A. 664. Since respondent's disputed determination was the result of the exercise of an administrative discretion definitely committed to him by statute, difficult as it may be to evaluate presumptions for practical comparison, petitioners' burden in overcoming that determination is undoubtedly heavier than that of overthrowing the general presumption of correctness arising upon all determinations of tax liability by respondent. Alfred E. Hamill, 30 B. T. A. 955; Albert Fried, 31 B. T. A. 638; Frederic H. Brendle, 31 B. T. A. 1188.

There can be no doubt that an individual, partnership, or corporation may engage, at the same time, in more than one distinct branch of business activities, and that one of those may be that of "dealer in securities." Cf. Harriman National Bank v. Commissioner, 43 Fed. (2d) 950. These separate activities may even all have to do with the purchase and sale of securities, but not all be those of a "dealer in securities." James B. Lowell, 30 B. T. A. 1297; Northeastern Surety Co., supra; Frederic H. Brendle, supra. However, the purpose of the statute and the quoted regulation was to provide a means for the correct reflection of income resulting from a definitely limited character of business. Obviously, this purpose would not be furthered by [fol. 38] permitting the use of this privileged method of tax computation to income from business activities which are not within the controlling regulation in question. The fact that a taxpayer maybe a statutory dealer in securities as to some of its activities, does not, alone, entitle him to return income from its other and different activities, computed by that privileged method.

This record does not disclose that the activities of the Schafer Bros. firm, reflected in the "Error Account," were essential to its business as a "dealer in securities." The ratio of those activities to the entire partnership business is not shown. However, it does appear that those activities were quite substantial. Certainly, at least, in such circumstances, the partnership is entitled to inventory only those securities purchased in its business or branch of business

of dealing in securities as defined by the regulation. That regulation, itself, provides for such a segregation and different treatment for tax purposes of the income from separate branches of a business. Cf. Harriman National Bank v. Commissioner, supra.

The testimony in these proceedings is very clear and positive as to the purpose and character of the transactions covering the securities carried in the "Error Account." During the year 1929, the partnership purchased those securities through orders executed by Leonard Schafer, or other brokers on any exchange on which the desired securities were listed. If the market price went up, those securities were sold through the execution of orders given to Leonard Schafer or other brokers. The identity of the purchasers of such securities was not known to the members of the partnership. The purchase and sale of securities in the "Error Account" had no relation to the parnership's customers' accounts or connection with the execution of orders given by its regular customers. They were purchased solely in expectation of a rise in the market, for the partnership's own account for resale, to any buyer, at a profit.

The meaning of "dealer in securities," as defined in the controlling regulation, has been considered many times by the courts, and this Board. It is limited to one who, as a merchant, buys and sells securities to customers for the profit thereon.

[fol. 39] It is unnecessary here to attempt an abstract description of what this definition includes, since it is clear that the transactions of the partnership, recorded in the "Error Account," were not within its boundaries.

Thus, except for customers in the sense that any speculator must have someone to whom he sells, which is not sufficient to bring the partnership within the regulation, it is not shown that as to the securities carried in the "Error Account," the partnership had customers—an essential requisite of the controlling definition. Albert Fried, supra. The stocks in dispute were purchased for the firm's own account solely in expectation of a rise in the market, for sale to anyone at a profit, "as distinguished from a purchase to create a stock of securities to take care of future buying orders in excess of selling orders." Frederic H. Brendle, supra. So far as this record discloses, as to this

branch of the partnership business, it was apparently a speculator and not a "dealer" within the regulation. Adirondack Securities Corporation, 23 B. T. A. 61; Oil Shares, Inc., supra.

It is contended for petitioners further that, inasmuch as the partnership has followed the practice of inventorying its securities at market in determining its income since 1925 it should be permitted, as a matter of course, to follow the same practice for the year 1929, here involved. Important as is the evidence of such prior practice of the partnership (Alfred E. Hamill, supra), it cannot be and is not controlling here, since we are concerned directly with only the year 1929. Even if the relevant facts pertaining to the securities carried in the "Error Account" in those prior years were similar to the facts appearing here as to 1929, and the respondent approved the partnership's return of income therefrom as a "dealer in securities," that approval certainly does not constitute more than a determination for those earlier years. It does not foreclose a change in such determination as to 1929. To do so would permit the perpetuation of an error, a result not only repugnant to common sense, but certainly not within the clear intent of the statute. Cf. Smith Paper Co., 31 B. T. A. 28; W. C. Mitchell Co., 27 B. T. A. 645.

Petitioners argue also that the partnership used the inventory method in reporting income for 1929. There was oral testimony to that effect. But the partnership return [fol. 40] for that year, admitted in evidence as such, without objection does not corroborate that contention. Nothing appears in that return after the titles "Inventory at beginning of year" and "Less inventory at end of year." Nor does the record disclose that either in that return or attached thereto was there a description of the method or basis upon which the questioned accounts of the partnership were kept. This is also fatal to the inventory privilege for the partnership. William W. Vaughan, 31 B. T. A. 548.

In any event, petitioners have not sustained their burden of establishing error in respondent's determination that the partnership of Schafer Bros. was not a "dealer in securities" in reference to the "Error Account" within the meaning of the regulation. Nor have they shown its compliance with the conditions, provided in that regulation,

precedent to the right to inventory securities carried in that account in determining income for the year 1929.

As to the second issue, involving the deductibility of certain alleged bad debts, the facts are insufficient to support a reasonable determination that the debts actually become worthless during 1929. The record indicates that the debts became worthless at the time the loans were made. Their deduction in computing taxable income for 1929 was properly denied. Eckert v. Burnet, 283 U. S. 140; Avery v. Commissioner, 22 Fed. (2d) 6; Paul Pryibil, 31 B. T. A. 164; J. Edgar Davidson et al., Executors, 26 B. T. A. 754.

The respondent's determination is approved.
Review by the Board.
Decision will be entered for respondent.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 72370

[Title omitted]

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated March 28, 1935, it is ordered [fol. 41] and decided: That there is a deficiency of $33,329.20 for the calendar year 1929.

Enter.

(Signed) Eugene Black, Member. [Seal U. S. Board of Tax Appeals.]

Entered Nov. 30, 1935.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 72373

[Title omitted]

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated March 28, 1935, it is ordered

and decided: That there is a deficiency of $33,423.09 for the calendar year 1929.

Enter.

(Signed) Eugene Black, Member. [Seal U. S. Board of Tax Appeals.]

Entered Mar. 30, 1935.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 72374

[Title omitted]

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated March 28, 1935, it is ordered [fol. 42] and decided: That there is a deficiency of $32,681.97 for the calendar year 1929.

Enter.

(Signed) Eugene Black, Member. [Seal U. S. Board of Tax Appeals.]

Entered Mar. 30, 1935.

[File endorsement omitted]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 72370, 72373, 72374

(Consolidated Proceeding)

[Title omitted]

STIPULATION REGARDING JURISDICTION ON REVIEW—Filed June 21, 1935

It is stipulated and agreed by and between the parties hereto that the decision of the Board of Tax Appeals in the above entitled cause which has been duly consolidated by order of said Board, may be reviewed by the Court of Appeals of the District of Columbia. This agreement is

made and filed pursuant to Section 1002 (d) of the Revenue Act of 1926, as amended by Section 519 (a) of the Revenue Act of 1934.

Algernon S. Schafer, Edward Schafer, Leonard Schafer, Petitioners, by Eugene Untermyer, Their Attorney. Guy T. Helvering, Commissioner of Internal Revenue, Respondent, by Frank J. Wideman, Assistant Attorney General.

[fol. 43] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 72370, 72373, 72374

(Consolidated Proceeding)

[Title omitted]

PETITION FOR REVIEW—Filed June 21, 1935

To the Honorable the Chief Justice and Associate Justices of the Court of Appeals of the District of Columbia:

Your petitioners, Algernon S. Schafer, Edward Schafer and Leonard Schafer, respectfully show:

I

Jurisdiction for Review

This is a proceeding pursuant to the provisions of Section 1001 of the Revenue Act of 1926, as amended by Section 1101 of the Revenue Act of 1932, for review by the Court of Appeals of the District of Columbia of a decision of the United States Board of Tax Appeals entered on the 28th day of March, 1935, and redetermining a deficiency of income taxes for the calendar year 1929 against your petitioner Algernon S. Schafer, in the amount of $33,329.20, your petitioner Edward Schafer in the amount of $33,423.09, and your petitioner Leonard Schafer in the amount of $32,681.97.

Each of your petitioners at the time of filing this petition is, and for considerable time prior thereto was, a citizen of the United States and an inhabitant of the City of New York, State of New York.

By order of the Board, the three proceedings were consolidated, and the appeal will be prosecuted on the same record.

On the 28th day of May, 1935, counsel for petitioners and counsel for respondent entered into an agreement [fol. 44] under and pursuant to the provisions of Section 1002 (d) of the Revenue Act of 1926, as amended by Section 519 (a) of the Revenue Act of 1934, that the decision of the United States Board of Tax Appeals in said consolidated proceeding should be reviewed by the Court of Appeals of the District of Columbia.

II

Nature of Controversy

The controversy in these cases before the United States Board of Tax Appeals, so far as pertinent, concerns the refusal of the Respondent, the Commissioner of Internal Revenue, in computing and determining the taxable net income of each of your petitioners for the year 1929, to compute and determine the amount to be included therein as income derived from Schafer Brothers, a copartnership (herein sometimes called "firm" or "partnership"), and which represented the distributable share of each of your petitioners of the income of said partnership, by inventorying securities owned by said partnership on January 1, 1929, and December 31, 1929, at the fair market value thereof, pursuant to the provisions of Section 22(c) of the Revenue Act of 1928.

As a result of the action of said Respondent in refusing to compute and determine the income of said partnership by use of inventories of the securities owned by it in 1929, and as a result of the decision herein by which said action of respondent was approved, the taxable net income for the year 1929 of each of your petitioners, each of whom had a one-third interest in said partnership was, erroneously, substantially increased.

The firm of Schafer Brothers was founded many years ago by the father of the petitioners, and the present partnership was formed in 1918. For many years prior thereto, said firm was a member of the New York Stock Exchange and, between 1918 and 1932, had a suite of offices and an established place of business at No. 120 Broadway,

Borough of Manhattan, City of New York, and during the year 1929 and for many years prior thereto each of your petitioners was actively engaged in the conduct of its business.

[fol. 45] During the year 1929 and for many years prior thereto, the firm engaged actively in the business of buying and selling securities for resale to customers, including underwritings and syndicate operations, in buying and selling securities for the account of the firm, and executing orders for customers to buy and sell on commission.

Transactions in securities for the account of the firm were handled through an account entitled "Error Account" and during the year 1929 transactions in said account constituted a substantial portion of the firm's business.

At the beginning and end of the year 1929 the firm owned securities none of which were purchased for investment and all of which were inventoried on its books at their fair market value as at the beginning and end of 1929, respectively. The Respondent has compelled the firm to restate said securities at cost. Substantially all of the securities so owned on January 1, 1929, were sold during that year, and substantially all of the securities owned on December 31, 1929, were sold during 1930.

The respondent and the petitioners have stipulated that the values shown on the books and reflected in the tax return of the partnership for the year 1929 were the respective fair market values thereof on January 1st, 1929, and December 31st, 1929, respectively.

By the rules and regulations of the New York Stock Exchange adopted in about 1923, the partnership has, in each year commencing in 1925 and including the calendar year 1929, inventoried securities owned by said partnership at their fair market values, which values are reflected on its books. During the same years, the partnership had determined its taxable income upon the inventory of values so arrived at at the beginning and end of each taxable year, and has reflected such values in the tax returns of the partnership and in the individual tax returns of the petitioners.

At all times up to the year 1929, respondent accepted and approved the partnership returns and corresponding individual returns for the partners on the basis of the inventories of securities owned by the partnership and reflected in said returns, and in 1929, for the first time, the

Respondent compelled the partnership to apply the factor of cost to the securities owned by it at the beginning and end of that year.

[fol. 46] During 1929 and for many years prior thereto, the fiscal year of the partnership and of your petitioners was the calendar year, and petitioners were the only partners in the firm.

On appeal to the United States Board of Tax Appeals, the final administrative agency of the executive branch of the Government, said Board affirmed the action of Respondent in refusing to determine the income for the year 1929 of the firm (and the resultant income of each of your petitioners) upon the basis of inventories of its securities at their fair market values, and declined to permit the use of inventories.

The question is whether the determination of the Board and the course of action pursued by respondent was proper under the law and the evidence, and whether or not material evidence offered by petitioners was properly excluded by the Board.

III

Assignments of Error

Your petitioners believe and aver that errors were committed by the United States Board of Tax Appeals to petitioners' damage and prejudice, as shown by the following assignments of error:

1. The Board erred in holding that the respondent did not err in refusing to determine the distributable income of said partnership upon the basis of inventorying the securities owned by said partnership at the beginning and end of 1929 at the market value thereof.

2. The Board erred in failing to determine that the respondent should have applied the inventory method of determining the value of securities owned by said partnership at the beginning and end of 1929, in order clearly to determine the distributable taxable income of said partnership, and the corresponding income taxable to the petitioners.

3. The Board erred in refusing to hold that the partnership was, during the year 1929, a dealer in securities pur-

chased and sold for the account of the partnership, including the securities owned by it at the beginning and at the end of said taxable year.

[fol. 47] 4. The Board erred in failing to hold that the use of inventories was necessary with respect to securities owned by the partnership at the beginning and end of the year 1929 in order clearly to determine the income of the partnership and the corresponding distributable income of the petitioners.

5. The Board erred in failing to hold that the partnership was justified in inventorying securities owned by it at the beginning and end of the year 1929 in accordance with the statutes in such case made and provided and in reliance upon previous rulings of the Respondent that the use of such practice was lawful and proper.

6. The Board erred in rejecting evidence tending to establish that the taxable income of the partnership and the resulting Federal income taxes of the petitioners in years previous to 1929 was greater because of the firm's practice of inventorying its securities, than such taxes would have been had such securities so owned by the partnership at the beginning and end of such taxable years been taken up at cost.

7. The Board erred in its determination that the partnership return filed for the calendar year 1929 did not describe the method and basis upon which the securities owned by the partnership at the beginning and end of said calendar year were inventoried.

8. The Board erred in refusing to hold that the evidence presented and the facts and circumstances disclosed by the record overcame Respondent's determination whereby he refused to permit the use of inventories with respect to securities owned by the partnership at the beginning and end of 1929.

9. The Board erred in refusing to hold that the nature of the business of said partnership compelled the use of inventories with respect to securities owned by the partnership at the beginning and end of 1929.

10. The Board erred in disregarding the effect of the rules and regulations of the New York Stock Exchange,

of which said partnership was a member and by which rules and regulations said partnership was consequently bound.

11. The Board erred in refusing to find that the stipulation between the parties to said proceeding respecting the [fol. 48] fair market value of the securities owned by said partnership at the beginning and end of 1929 complied with the regulations of the respondent.

12. The Board erred in disregarding the effect of said firm's right, under the exceptions contained in Section 118 of the Revenue Act of 1928, to sell and repurchase securities owned by it within thirty days and to deduct any resulting losses, and that said firm refrained from exercising such rightful privilege in reliance upon previous rulings of respondent permitting it to inventory securities owned by it at the beginning and end of the calendar year 1929.

13. The Board erred in disregarding the evidence that said partnership refrained from exercising its rights to sell and repurchase, during the year 1929, the securities owned by it at the end of 1929 and to deduct losses resulting from such sales, as permitted by Section 118 of the Revenue Act of 1928.

14. The ruling and determination of the respondent and the holding and decision of the Board herein impair the constitutional rights of the petitioners and violate the provisions of the Constitution of the United States, thereunto made and provided.

15. The Board erred in refusing to hold that the distributable income of the partnership for the calendar year 1929 should be computed on the basis of inventorying securities owned by said partnership at the beginning and end of said taxable year, and that the income of the petitioners, as members of said partnership, should be redetermined accordingly.

16. The Board erred in entering its decision of redetermination that the petitioner Algernon S. Shafer owes a deficiency of income taxes for the calendar year 1929 of $33,329.20.

17. The Board erred in entering its decision of redetermination that the petitioner Edward Schafer owes a

deficiency of income taxes for the calendar year 1929 of $33,423.09.

18. The Board erred in entering its decision of redetermination that the petitioner Leonard Schafer owes a deficiency of income taxes for the calendar year 1929 of $32,681.97.

[fol. 49] Wherefore, your petitioners pray that the decision of the Board of Tax Appeals entered herein be reviewed and reversed by this Honorable Court insofar as it relates to the refusal to compute and determine the distributable income of said petitioners from the partnership of Schafer Brothers and their corresponding tax liability for the calendar year 1929 upon the basis of inventorying securities owned by said partnership at the beginning and end of the calendar year 1929 at the fair market value thereof, as stipulated in said proceedings, and for such other and further relief as the Court may deem meet and proper in the premises.

Algernon S. Schafer, Edward Schafer, Leonard Schafer, Petitioners.

Duly sworn to by Eugene Untermyer. Jurat omitted in printing.

[fol. 50] [File endorsement omitted]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 72370, 72373, 72374. Consolidated Proceeding

[Title omitted]

NOTICE OF FILING PETITION FOR REVIEW—Filed June 21, 1935

To Robert H. Jackson, Esq., Assistant General Counsel, Bureau of Internal Revenue, Washington, D. C.:

Please take notice, and you are hereby notified, that the petitioners on the 21st day of June, 1935, will file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the Court of Appeals of the District of Columbia, of the decision of the Board heretofore rendered in the above-entitled case.

A copy of said petition for review and assignment of errors as filed is hereto attached and served upon you.
Dated June 21st, 1935.

Respectfully, Eugene Untermyer, Attorney for Petitioners, 30 Pine Street, New York City, 716 Investment Building, Washington, D. C.

Personal service of the foregoing notice, together with a copy of petition for review and assignment of errors mentioned therein, is hereby admitted this 21st day of June, 1935.

Robert H. Jackson, Assistant General Counsel, Bureau of Internal Revenue.

[fol. 51] [File endorsement omitted]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 72370, 72373, 72374. Consolidated Proceeding

ALGERNON S. SCHAFER, EDWARD SCHAFER, and LEONARD SCHAFER, Petitioners,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

Statement of Evidence—Lodged August 6, 1935; Filed August 7, 1935

The above proceedings came on for hearing at New York, New York, before Hon. J. Russell Leech, Member of the United States Board of Tax Appeals, on the 28th day of February, 1934, there being present the petitioners and respondent, by their respective counsel.

Before the hearing, the parties, through their respective counsel, entered into and filed at the hearing stipulations respecting certain facts in the case, which read as follows:

Docket No. 72373

[Title omitted]

STIPULATION OF FACTS—Filed February 28, 1934

It is hereby stipulated and agreed by the petitioner, Edward Schafer (hereinafter sometimes called "Taxpayer"), and the Commissioner of Internal Revenue (hereinafter sometimes called "Respondent"), by their respective attorneys, that the following facts are true:

1. Petitioner is an individual whose post office address is 1 Wall Street, in the Borough of Manhattan, City of New [fol. 52] York, and during the calendar year 1929 was a partner in the general partnership of Schafer Brothers (hereinafter sometimes called "Partnership"), then with principal offices and place of business at 20 Broadway, in the Borough of Manhattan, City of New York. The Partnership was formed in 1918.

2. The notice of deficiency, a copy of which is annexed to the petition herein as Exhibit "A", was mailed to the Taxpayer under date of March 21, 1933.

3. The petition herein, verified May 17, 1933, was filed with this Board on May 20, 1933.

4. The tax in dispute is income tax for the calendar year 1929 and is in the amount of $33,423.09.

5. The Partnership, from in or about the year 1918 up to February 1, 1932, consisted of the Taxpayer and his two brothers, Leonard Schafer and Algernon S. Schafer, all of whom were general partners. The original firm of Schafer Brothers was founded by the father of said partners in or about the year 1860 and said partnership, as from time to time constituted, was at all times since its formation doing business in the City of New York.

6. The firm of Schafer Brothers since long prior to the year 1913, has been and at all times mentioned in this stipulation was a member of the New York Stock Exchange.

7. At all times mentioned in this stipulation, the Partnership has had a suite of offices and established place of business in the City of New York.

8. Since the year 1899, Leonard Schafer aforesaid had owned a seat on the New York Stock Exchange and at all times since the formation of the Partnership in 1918 and

up to February 1, 1932, said Leonard Schafer was the floor member of the Partnership and the two remaining partners, including the Taxpayer, were its office members, both actively engaged in the conduct of the business.

9. During substantially all of the time since its formation in 1918 mentioned in this stipulation, the Partnership, in the course of its business, bought and sold securities, both those listed in the New York Stock Exchange and other securities, for its own account. The transactions were in most part handled through said Leonard Schafer, the floor member of the Partnership, but at times through other brokers. Said branch of its business was conducted under [fol. 53] numerous separate accounts that appear on its books, frequently arbitrarily named and numbered, including therein an account entitled "Error Account."

10. During the year 1929, the Partnership, in the general course of its business, engaged in extensive purchases and sales of securities in its various trading accounts, including the Error Account.

11. At the close of business on December 31, 1928, the Partnership owned the securities specified and described in Exhibit "B" to this stipulation, which is hereby made a part hereof. Said securities were carried in the Error Account. The first column of figures in said Exhibit "B" shows the fair market value of each item of said securities on said date; the second column of figures in said Exhibit "B" shows the cost to the Partnership of each such item.

12. At the close of business on December 31, 1929, the Partnership owned the securities specified and described in Exhibit "C" to this stipulation, which is hereby made a part hereof. Said securities were carried in the Error Account. The first column of figures in said Exhibit "C" shows the fair market value of each item of said securities on December 31, 1929; the second column of figures in said Exhibit "C" shows the cost to the Partnership of each such item.

13. All facts set forth in this stipulation or in any exhibit thereto are competent evidence in this proceeding, but nothing herein contained shall preclude either party from objecting to any one or more statements of fact herein contained on the ground of irrelevancy or immateriality.

14. Each of the parties to this stipulation reserves the

right to introduce additional evidence not inconsistent with this stipulation.

Dated, New York, February 14, 1934.

Eugene Untermyer, Attorney for Petitioner. E. Barrett Prettyman, Attorney for Respondent.

[fol. 54]

EXHIBIT "B" TO STIPULATION

Inventory as at December 31, 1928.

Quantity.	Security.	Fair Market Value.	Actual Cost.
1,000	South American Gold	$3,000.00	$3,000.00
500	N. Y. Transportation	22,500.00	22,500.00
38	Tidal Osage	532.00	532.00
300	Woodworth Pfd	11,700.00	7,500.00
1,500	Fansteel Products	18,000.00	29,712.50
200	National Radiator	3,000.00	6,125.00
2,000	General Baking	20,000.00	29,862.50
3,000	Remington Rand	90,000.00	87,300.00
3,000	Brown Boverie	48,000.00	49,525.00
3,200	Universal Pipe	64,000.00	79,550.00
2,000	C. M. W.	18,000.00	17,375.00
		$298,732.00	$339,982.00
Net increase of cost over market			$34,250.00

EXHIBIT "C" TO STIPULATION

Inventory as at December 31, 1929.

Quantity.	Security.	Fair Market Value.	Actual Cost.
1,000	South American Gold	$1,500.00	$3,000.00
500	N. Y. Transportation	10,000.00	22,500.00
38	Tidal Osage	190.00	532.00
200	National Radiator	300.00	6,125.00
300	National Radiator	600.00	2,100.00
3,200	Universal Pipe	9,600.00	79,550.00
800	Universal Pipe	2,400.00	7,200.00
2,000	General Baking	7,500.00	29,862.50
400	Rutland Preferred	24,000.00	27,600.00
300	International Cement	16,800.00	23,750.00
1,000	Warner	20,000.00	34,825.00
2,000	Northern Pacific	169,000.00	221,987.50
2,000	Electric Boat	9,500.00	19,837.50
2,500	Alleghany Corp	57,500.00	130,000.00
100	Niagra Hudson	1,150.00	2,637.50
1,000	Radio	41,250.00	98,187.50
1,000	Consolidated Gas	94,000.00	156,250.00
2,000	Shattuck	72,000.00	123,850.00
2,000	Murray Corp	37,000.00	70,000.00
500	United Corporation	14,625.00	26,500.00
1,000	International Combustion	5,750.00	38,275.00
500	Chrysler	17,500.00	28,082.50
500	Eastman-Kodak	87,000.00	95,250.00
500	New York Dock	17,500.00	17,500.00
1,500	Phila. and Reading Coal	18,000.00	17,500.00
2,100	Oppenheim Collins	94,000.00	96,600.00
1,000	Lehman Corp	73,000.00	69,000.00
1,000	St. Paul Preferred	41,500.00	42,000.00
400	Alleghany Preferred	38,200.00	37,800.00
		$981,965.00	$545,917.00
Net increase of cost over market, 12/31/28			$34,250.00
Net difference—held taxable			$511,667.00

[fol. 55] Docket No. 72370

[Title omitted]

STIPULATION—Filed February 28, 1934

It is hereby stipulated and agreed by the petitioner, Algernon S. Schafer (herein sometimes called "Taxpayer"), and the Commissioner of Internal Revenue (hereafter sometimes called "Respondent"), by their respective attorneys, that the facts stipulated in the case of Edward Schafer against Commissioner of Internal Revenue (Docket No. 72373) shall stand as and for the facts stipulated in this proceeding, and that each and all of the provisions of said stipulation shall apply to this proceeding, save and except that the first sentence of Paragraph "5", for the purpose of this proceeding, shall read as follows:

"The Partnership, from in or about the year 1918 up to February 1, 1932, consisted of the Taxpayer and his two brothers, Leonard Schafer and Edward Schafer, all of whom were general partners."

and that the tax in dispute set forth in Paragraph "4", shall be changed to $33,329.20.

It is further stipulated that Exhibit "B" and "C" of said stipulation stand as and for Exhibits "B" and "C" to this stipulation.

Dated, New York, February 14, 1934.

Eugene Untermyer, Attorney for Petitioner. E. Barrett Prettyman, Attorney for Respondent.

[fol. 56] Docket No. 72374

[Title omitted]

STIPULATION—Filed February 28, 1934

It is hereby stipulated and agreed between the Petitioner, Leonard Schafer (hereinafter sometimes called "Taxpayer") and the Commissioner of Internal Revenue (hereinafter sometimes called "Respondent"), by their respective attorneys, that the facts stipulated in the case of Edward Schafer against Commissioner of Internal Revenue

(Docket No. 72373) shall stand as and for the facts stipulated in this proceeding, and that each and all the provisions of said stipulation shall apply to this proceeding, save and except:

1. That the address "1 Wall Street", appearing in Paragraph "1," shall be changed to "50 Broadway".

2. That the first sentence of Paragraph "5", for the purpose of this proceeding, shall read as follows:

"The partnership, from in or about the year 1918 up to February 1, 1932, consisted of the Taxpayer and his two brothers, Edward Schafer and Algernon S. Schafer, all of whom were general partners."

3. That Paragraph "8", for the purpose of this proceeding, shall read as follows:

"8. Since the year 1899, the Petitioner had owned a seat on the New York Stock Exchange and at all times since the formation of the Partnership in 1918 and up to February 1, 1932, the Petitioner was the floor member of the Partnership, and the two remaining partners were its office members both actively engaged in the conduct of its business."

4. That the words "said Leonard Schafer", appearing in Paragraph "9", shall be changed to "Petitioner."

[fol. 57] 5. That the tax in dispute, set forth in Paragraph "4", shall be changed to $32,681.97.

It is further stipulated that Exhibits "B" and "C" to said stipulation shall stand as and for Exhibits "B" and "C" to this stipulation.

Dated, New York, February 14, 1934.

Eugene Untermyer, Attorney for Petitioner. E. Barrett Prettyman, Attorney for Respondent.

There follows herewith a statement in narrative form of the evidence adduced at the hearing in the above entitled cause which in addition to the aforesaid stipulations of fact, is considered material for a review of the decision entered herein by the United States Board of Tax Appeals under the assignments of error set forth in petitioners' petition to the Court of Appeals of the District of Columbia:

WILLIAM F. CORNELL, called as a witness by the petitioners, testified that he had been connected with Schafer Brothers for 26 or 27 years and had been employed by the present firm since its inception in 1918. Since that time he had had supervision over the books of the partnership.

Since the formation of the present partnership, in 1918, until about 1925 the business comprised the execution of orders for customers, the execution of orders on the Exchange for brokers, participation in the issue of securities, and dealing in securities for the account of the firm.

Trading or dealing in securities for the firm's account was practically all recorded in an account more or less arbitrarily described as the "Error Account."

About 1925 or 1926, the firm enlarged its policy of dealing in securities and participating in syndicates and participations.

There was introduced in evidence, as Petitioners' Exhibit 1, hereto annexed, a schedule representing various securities in which the firm had an interest, by way either of participations or syndicates, from 1926 to and including 1929.

Until the end of 1924, securities owned by the partnership at the end of the year were taken up at cost on its [fol. 58] books. Beginning at the end of 1924 and since that time, under the instructions of Mr. Edward Schafer, one of the petitioners and a partner in the firm, securities owned by the partnership were inventoried on the books at market value. Up to 1926 they were inventoried once a year, at the end of the calendar year. From 1926 on, the securities in the individual accounts, including the "Error Account," were inventoried monthly. Over that entire period, including 1929, the fiscal year of the partnership was the calendar year.

At the end of 1929, the firm had on hand a greater amount of securities than in prior years, partly because of the drop in the market which had made it impossible to sell them out to advantage.

No investment accounts were carried in the books of the partnership, it being its practice to show all investments in the personal accounts of the members of the firm. Investments so carried were in every instance carried at cost to the particular member of the partnership.

The witness had by request caused the books to be examined to ascertain whether the inventorying of securities owned by the partnership at the beginning and end of those years would have increased or decreased the distributable income of the partnership for prior years over the amount of such income had the securities been carried at cost. For 1928, the inventorying of securities at market decreased the amount of distributable income; for 1927, the amount of distributable income was increased by reason of inventorying at market the securities so owned by the partnership, in lieu of carrying them at cost.

And thereupon counsel for petitioners propounded the following question:

"Q. Then, just state how much the income of the partnership was increased as a result of the inventorying of securities in 1927."

to which question counsel for respondent objected on the ground that the answer called for by the question was immaterial. The objection was sustained, whereupon counsel for petitioners noted an exception, which was allowed.

The witness testified that he had computed the amount of additional Federal income tax paid in 1927 by the three [fol. 59] partners, the petitioners herein, as a result of having inventoried securities in that year instead of taking them at cost.

Counsel for petitioners propounded the following questions:

"Q. Will you state what the amount of this additional tax was?"

to which question counsel for respondent objected on the ground that the answer called for by the question was immaterial. The objection was sustained, whereupon counsel for petitioners noted an exception, which was allowed.

Counsel for petitioners then propounded the following question:

"Q. In inventorying securities, as the partnership did, did the partnership rely on the ruling made in about 1922 as respects the right of a trader in securities to inventory them?"

to which question counsel for respondent objected "as calling for a conclusion." The objection was overruled, and exception noted.

The said ruling referred to in the question above quoted had previously been brought to the attention of the witness, and marked "Petitioners' Exhibit 2 for Identification", and is hereto annexed.

The witness further testified that it was essential for the partnership to inventory its securities in its trading accounts in order to get a true picture of their profit and loss at the end of the year.

Mr. Leonard Schafer, one of the petitioners and a partner of the firm, was a member of the New York Stock Exchange. He was a specialist in certain securities. A specialist receives from other brokers on the Exchange orders at fixed prices (viz., other than at market), for which the specialist keeps orders to buy and sell on his "Specialist Book" at the various limits at which they are placed.

The securities in the "Error Account," which are listed in Exhibits B and C of the stipulation, were not purchased for investment but were purchased for the firm's account with the idea of making a profit.

The witness further testified that participation in the syndicates with respect to the securities shown in Exhibit [fol. 60] 1 would probably imply that the firm had a financial responsibility for a portion of the issue of such securities, and that in selling the same they had agreed to take a certain number of shares at the issue price.

Petitioners offered in evidence a sheet showing the securities in the "Error Account" for the years 1927 and 1928, the prices at which they were sold, the prices at which they were inventoried, and the cost. Said sheet also showed the difference in profits as a result of inventorying those securities in said two years. Objection to the introduction of said sheet as being immaterial was sustained, exception noted, and allowed, and the sheet marked as Petitioners' Exhibit 3 for Identification, hereto annexed.

The securities in the "Error Account" and in any similar account were taken up in the income tax return of the partnership on the basis of market for each of the years 1925, 1926, 1927, 1928 and 1929.

On cross-examination, the witness gave the names of a number of customers of the partnership engaged in vari-

ous occupations but who were not stockbrokers. The firm executed orders for the persons so named by a broker, either the partnership broker or some other broker. The firm did not know the identity of the ultimate purchaser of stocks that were sold to such customers.

The witness described the firm's dealing account as referring to the securities that they bought and sold. Such securities in the "Error Account" were largely securities bought and sold on the floor of the New York Stock Exchange by some other brokers, the firm not knowing the identity of the seller. The witness stated that, in his mind, a dealing account and a trading account were substantially the same.

He was asked whether the firm of Schafer Brothers, in 1929, was listed as specialists. He stated he did not think so, but he stated that certain individual brokers might be so listed. He did not know how the firm was considered on the Stock Exchange but that the firm had a partner (Leonard Schafer) who was a specialist.

He did not believe that it was possible for a partnership to be listed as a specialist although a member or one of the members may specialize. It might be possible for a partnership to do nothing else but specialize.

[fol. 61] Interrogated in regard to the meaning of an investment account, the witness testified:

"A. 'Investment', in my opinion is something that is bought for investment purposes, to be retained for a period of years, period of time, according to its investment qualities.

Q. Was it a speculative account?

A. Well, that is pretty difficult to determine. I don't know exactly just where you draw the line on speculation. I suppose any business where a man buys something at a price with the intention or with the hope of realizing a profit, might possibly be considered speculative. With us, it was a trading proposition."

The securities carried in the "Error Account" were purchased and sold on the floor of whatever exchange they might be listed on, mainly the New York Stock Exchange.

He testified on redirect examination that the securities listed in the "Error Account" were dealt in or traded in either on the floor of the New York Stock Exchange, the Curb, or whatever market they might have been listed on.

CHARLES W. FOUS, called as a witness by the petitioners, testified that he was the bookkeeper of Schafer Brothers and had been a bookkeeper for seven years.

He had examined the books and stated that in 1929 in the "Error Account" there were purchased 107,500 shares of stock and sold 92,500 shares, comprising 72 different varieties of securities.

Of the securities listed in Exhibit B to the stipulation as being on hand in the "Error Account" on December 31, 1928, all except 6 items were sold during 1929, and 9,800 shares were sold.

Of the securities listed in Exhibit C to the stipulation as being on hand in the "Error Account" on December 31, 1929, all of the securities were sold during 1930 excepting 500 shares New York Transportation and 38 shares Tidal Osage. 1,000 shares South American Gold and Platinum, so listed, were sold but the witness was not certain whether in 1930 or 1931.

[fol. 62] EDWARD SCHAFER, one of the petitioners, testified as follows in behalf of the petitioners:

"Q. Will you state what, in the nature of your business, concluded you to inventory your securities in your trading account in 1924, and years thereafter? . . .

A. In 1924, or prior to that, we were taking our inventory at cost, but by doing so we did not know where we stood. After that, we inventoried in order to find out exactly what profit or loss there may have been, in order to divide it amongst the partners. Frankly, anybody that does not inventory his books, does not know what he is saying, or is broke. The New York Stock Exchange insists upon us inventorying our securities, when they require a questionnaire from all the members."

The Stock Exchange requirement that member firms inventory their securities existed in all the years commencing in about 1923 through 1929 and thereafter. If the market were up, a man who did not inventory his securities could conceal his profits.

The partnership paid Federal income taxes on the basis of inventorying securities owned by the firm in 1927. Objec-

tion was sustained and exception noted to the following question:

"Q. Do you know whether in 1927 the profits you reported to the Federal government, on which you paid income tax, were or were not correct, as a result of inventorying?"

The securities held by the partnership at the end of 1929 were not bought for investment, and had the partnership been able to get out with a profit or a small loss, they would have done so. They subsequently sold substantially all of the securities in that account.

He testified on cross-examination that the method of purchasing the securities in the "Error Account" would be for a member of the partnership to give an order to buy the stock to its broker on the floor, who might have been his brother Leonard, or any other broker, and if the stock went higher they would try to take a profit.

The witness did not know the identity of the person who sold to the partnership, other than the broker, and when they sold the securities they would not know the identity of the purchaser, other than the broker.

[fol. 62] The witness testified as follows on direct examination:

"Schafer Brothers has been down in the Street for 73 years, and this is the first time that any one of us has ever been on the stand. We have established losses for everybody that had a loss and that could establish a loss honorably and saved their income tax by doing so. Had I known that the Government was going back—going back on me—I am going to talk freely here, if I can—had I known that the Government was going back on me and tell me, after I was doing a certain thing for ten years, or approximately ten years, that I would have to stop it, and go back and change the idea of what I had been doing for ten years, I would not have been foolish enough to come up here and be asked by you gentlemen at all. I would have sold out these securities, and I would have had no tax to pay. I would not have had this argument with my friends here. I would have been absolutely concluded. There would not have been anything more said about it. I could have bought them back if I felt like it. But I thought the Gov-

ernment's ruling was a ruling. I did not think they were going to change every minute or so, and say 'two years ago you had certain information and you should not have done it'—if they had told me that, I would have sold out my securities, and would have taken a loss."

WILLIAM F. CORNELL, having been recalled as a witness in behalf of the petitioners, was shown copies of the Federal income tax returns of each of the petitioners, Algernon S. Schafer, Edward Schafer and Leonard Schafer, for the calendar year 1927, and sheets containing computations showing what the amount of the Federal income tax of each of said petitioners would have been had the securities of the partnership on hand at the beginning and end of that year been taken at cost in lieu of at market.

Objections to said offers were sustained and exceptions noted and said documents marked for identification as Petitioners' Exhibits 4, 5, 6, 7, 8, and 9, of which copies are hereto annexed.

The Respondent called no witnesses but introduced in evidence the original partnership return for the calendar [fol. 64] year 1929 of Schafer Brothers, 120 Broadway, New York, N. Y., which is hereto annexed as Respondent's Exhibit "A":

The Respondent then called MR. EDWARD SCHAFER as a witness for the Respondent. He was shown his individual income tax return for the calendar year 1929 and stated that the use of the word "broker," after the word "occupation," correctly reflected his occupation in 1929.

On cross-examination by counsel for petitioners, he testified:

"A. I mean by the word 'broker' that I would be buying and selling and dealing in securities, and when we underwrote an issue and obligated ourselves to a certain number of shares, why, we disposed of it to certain clients; or, that if I had bought the stock on the New York Stock Exchange for customers, and sold that out again, that also would come in that."

The following question was then propounded by counsel for petitioners upon cross-examination of the witness:

"Q. You may tell us whether your trading as shown in the error account was merely spasmodic, or was an essential part of your business?"

to which question counsel for respondent objected on the ground that it was not proper cross-examination. The objection being overruled and exception noted, the witness answered that such trading was an essential part of the business of Schafer Brothers in 1929 and for fifty years before.

It is hereby stipulated and agreed that the above and foregoing statement of evidence contains all of the evidence introduced before the United States Board of Tax Appeals material to a consideration of the assignments of error set forth in the petition of petitioners to the Court of Appeals of the District of Columbia for a review of the decision entered herein by the United States Board of Tax Appeals.

It is further stipulated and agreed that said statement, as made, may be approved by the United States Board of Tax Appeals without further notice to either party hereto and, when so approved, said statement of evidence may be [fol. 65] filed in the Clerk's office and may become a part of the record for the purpose of the petition for review filed herein by Algernon S. Schafer, Edward Schafer and Leonard Schafer in this consolidated cause.

Dated August 6, 1935.

Algernon S. Schafer, Edward Schafer, Leonard Schafer, Petitioners, by Eugene Untermyer, Their Attorney. Guy T. Helvering, Commissioner of Internal Revenue, Respondent, by Robert H. Jackson, Assistant General Counsel.

ORDER APPROVING STATEMENT OF EVIDENCE

The foregoing statement on the petition for review of Algernon S. Schafer, Edward Schafer and Leonard Schafer in this consolidated cause is hereby approved, signed and ordered to be made of record in the above entitled cause this 7th day of Aug., 1935.

(S.) Eugene Black, Member of United States Board of Tax Appeals.

Form 1065
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

(Auditor's Stamp)

FIELD AUDIT

PARTNERSHIP RETURN OF INCOME

For Calendar Year 1929

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

PRINT PLAINLY NAME AND BUSINESS ADDRESS OF PARTNERSHIP

Name: Schafer Bros
(Name)
120 Broadway
(Street and Number)
NY NY
(Post Office and State)

Kind of Business: Brokerage

Date of Organization: January 1918

Do Not Write in These Spaces

File Code: 2541
378051

Serial Number:

COLLECTOR (Date Received) MAR 15 1930 2nd DIST. N.Y. INTERNAL REVENUE

Cerified
As 2 —

Item and Instruction No.

GROSS INCOME

1. Gross Receipts from Business or Profession		$ 1104937
2. Less Cost of Goods Sold:		
(a) Inventory at beginning of year		
(b) Merchandise bought for sale		
(c) Cost of labor, supplies, etc. (From Schedule A)	7697783	
(d) Total of Lines (a), (b), and (c)	7697783	
(e) Less inventory at end of year		7697783
3. Gross Profit from Business or Profession (Item 1 minus Item 2)		$ 6512154
4. Income from Other Partnerships. (State name and address)		72270
5. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)		
6. Interest on Tax-free Covenant Bonds upon which a Tax was Paid at Source		
7. Rents		
8. Royalties		
9. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule B)		
10. Dividends on Stock of Domestic Corporations		3415153
11. Other Income (including dividends on stock of foreign corporations). (State nature of income)		
12. TOTAL INCOME IN ITEMS 3 TO 11		$ 3617193

U.S. BOARD OF TAX APPEALS
DIV. 5 DOCKET 72373
RECEIVED IN EVIDENCE
FEB 28 1934
PETITIONER'S EXHIBIT A
RESPONDENT'S

DEDUCTIONS

13. Salaries of Employees. (Do not include compensation for partners)		$ 1311486
14. Rent on Business Property		
15. Repairs. (From Schedule D)		
16. Interest on Indebtedness		
17. Taxes on Business Property. (From Schedule E)		
18. Losses by Fire, Storm, etc. (From Schedule F)		
19. Bad Debts. (From Schedule G)		
20. Depreciation, Obsolescence, and Depletion. (From Schedule H)		
21. Other Deductions Authorized by Law. (Explain below or on separate sheet)		
22. TOTAL DEDUCTIONS IN ITEMS 13 TO 21		$ 1311486
23. NET INCOME (Item 12 minus Item 22)		$ 1030579

24.

PARTNERS' SHARES OF INCOME AND CREDITS
(See Instruction 24)

1. NAME AND ADDRESS OF EACH PARTNER	3. DIVIDENDS (ITEM 10 ABOVE)	4. EARNED INCOME	5. BALANCE OF NET INCOME (ITEM 23 MINUS SUM OF AMOUNTS IN COLUMNS 3 AND 4)	6. CAPITAL GAIN OR (SCHEDULE H COLUMN 6) NET LOSS (—)	8. INCOME TAX PAID AT SOURCE (3% OF ITEM 4)	9. INCOME TAX PAID FOREIGN COUNTRIES OR UNITED STATES POSSESSIONS
(a) Edward A Schafer	1153185		1173731			
(b)						
(c) Edward A Schafer	1153184		500579			
(d)						
(e) Algernon A. Schafer	1153184		465993			
(f)						
(g)						
(h) TOTALS	3415153		1539303			

R1

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SCHEDULE A—COST OF LABOR, SUPPLIES, ETC. (See Instruction 7)

Items	Amount	Items	Amount (Enter as Item 2c)
Labor Cleaning House 10486 Rent 20784		Stationery + Light 3999 Gardening	12499
Supplies Telephone + Telegram 9611 93		Insurance 3,240.94 Miscellaneous 1,887.50	
Auditing 1400.00 Postage + exp 1399 31			

SCHEDULE B PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 9)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost or Value as of March 1, 1913, Whichever Greater	6. Subsequent Improvements	7. Net Profit (Enter as Item 9)
		$	$	$	$	$

State how property was acquired

SCHEDULE C CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9a)

1. Kind of Property	2. Date Acquired (Mo. Day Year)	3. Date Sold (Mo. Day Year)	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost or Value as of March 1, 1913, Whichever Greater	7. Subsequent Improvements, and Capital Deductions	8. Net Gain (Enter in Column 8, Item 26 on page 1)
			$	$	$	$	$

State how property was acquired

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

Items	2. Amount (Enter as Item 15)
	$

SCHEDULE E—TAXES PAID (See Instruction 17)

Items	2. Amount (Enter as Item 17)
	$

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 18)

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, Whichever Greater	4. Subsequent Improvements	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss (Enter as Item 18)
		$	$	$	$	$

State how property was acquired

SCHEDULE G—EXPLANATION OF DEDUCTION FOR BAD DEBTS (See Instruction 19)

	Year	Ch'd on Acct.	Bad Debts
(a)	1926	$	$
(b)	1927		
(c)	1928		
(d)	1929		

SCHEDULE H—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost or Value as of March 1, 1913, Whichever Greater (Exclusive of Land)	Amount of Depreciation Charged Off	
					6. Previous years	7. This year
				$	$	$

SCHEDULE I—NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC. (See Instruction 24)

1. Obligations or Securities	2. Amount Owned	3. Interest Received
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	$	$
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended, and Certificates of Indebtedness issued after June 17, 1929		
(c) Liberty 3½% Bonds and other obligations of U. S. issued before September 1, 1917, and obligations of U. S. possessions		
(d) Liberty 4% and 4½% Bonds, Certificates of Indebtedness issued before June 18, 1929, Treasury Bonds, and Treasury Savings Certificates		
(e) Treasury Notes		

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this 14 day of March, 1930.

Michael Bennett
(Signature of officer administering oath)

(Title)

M F Connell
(Member of partnership)

120 Brooding N.Y.A
(Address of partner)

(An amended return must be plainly marked "Amended" across face of return)

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EXHIBIT 1

		Shares.
1926	Berlin Electric Rway 6½	$15,000
	Financial & Industrial, Cr. "A"	700
	" " " Cr. Pfd.	700
1927 and 1928	Prudence Co. Pfd.	500
	American Stores Co.	300
	Alraham & Stram 5½ Bonds	$15,000
	Associated Rayon Corp.	1,000
	Austrian Credit Instaldt	500
	Buzza Clark Co. com.	1,500
	" " " Pfd.	1,000
	Best Co.	200
	L. Bamburger Co. 6½ Pfd.	500
	[fol. 66] Chain Store Stocks	1,000
	Consolidated Retain Stores	50
	Collem & Aikman	200
	Chi., Auk Island & Par. R. R. 4½	$25,000
	Duplan Siek Corp.	50
	Empire Bond and Mortgage com.	500
	" " " " Pfd.	500
	Felenec Som Wm. Co. com.	150
	" " " " Pfd.	75
	Flankeim Shoe com.	200
	" " Pfd.	100
	Federal Bake Shope	2,500
	S. M. Goldberg Stores com.	5,000
	" " " Pfd.	4,000
	A. C. Gilbert Co. com.	750
	" " " Pfd.	1,500
	Gold Point Hosiery com.	75
	" " " Pfd.	75
	Greek Government 6%	$20,000
	International Safety Razor Co.	200
	International Printing Ink	1,500
	Interstate Dept. Store com.	70
	" " " Pfd.	100
	Joske Bros.	200
	Kroger Grocery & Baking	500
	Keith Aber Orpheim Pfd.	200
	Loews Inc. Pfd.	200
	Mandel Bros.	200
	McKesson & Robbins	1,400

EXHIBIT 1—Continued

		Shares.
	N. Y. Foreign Investing Co. 5½	$20,000
	Webel Oscar com.	2,666⅔
	" " Pfd.	8,000
	Pet Miek Co.	150
	Peoples Drug Store	500
	Second General American Investors	150
	Seiman Bros.	3,500
	St. Louis & San Francisco R. R.	$50,000
	Shulte United Stores com.	600
	" " " Pfd.	600
	Seton Leather Co.	3,000
	Truax Triar Coal Co.	3,500
	Thompson Products Corp.	1,000
	Tishman Realty Co.	300
	[fol. 67] United Biscuit Co. com.	1,200
	United Biscuit Co. Pfd.	300
	United Piece Dyenorke com.	100
	" " " Pfd.	100
	Wayne Peimp Co. com.	2,750
	" " " Pfd.	3,500
	Walgreen Co. com.	500
	" " Pfd.	100
	Woodworth Inc. com.	6,000
	" " Pfd.	6,375
	Westphalia United Electric 6%	$10,000
	Weber & Heillrener Co. Pfd.	100
	Waiti and Bond Co. "A"	12,700
	" " " " "B"	10,675
1929	American International Corp.	$15,000
	Broadway National Bank	1,200
	Blue Ridge Corp. com.	1,500
	" " " Pfd.	1,500
	Commercial Investment Trust 5½	$15,000
	Columbia Picture Corp. com.	3,500
	" " " Pfd.	2,000
	Consolidated Gas Co.	200
	Cream of Wheat Co.	200
	Employers Group Associates	700
	General Realty & Utility	700
	Hahn Dept. Stores com.	300
	" " " Pfd.	300
	Lehman Corp.	1,000

EXHIBIT 1—Continued

	Shares.
Lazarm F. A.	100
National Industrial Service com.	7,550
" " " Pfd.	2,550
Phelps Dodge Co.	500
Stein Cosmetic Co. com.	400
" " " Pfd.	700
Stein A. C. com.	100
" " Pfd.	50
Shenandoah Corp. com.	500
" " Pfd.	500
Tolallo and Allied Stocks	400
United Securities Trust Ass't	2,000
Goldman Sacks Trading	1,250

[fol. 68] PETITIONER'S EXHIBIT #2 FOR IDENTIFICATION

(From Prentice-Hall Tax Service for 1931)

Special Class of Business

Dealers in Securities

9720. Reg. 74, Art. 105. Inventories by dealers in securities.—A dealer in securities, who in his books of account regularly inventories unsold securities on hand either—

(a) At cost;
(b) At cost or market, whichever is lower; or
(c) At market value,

may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another be authorized by the Commissioner. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities

and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation and not in the course of an established business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule.[1]

[fol. 69] 9724. Individual held to be a dealer in securities. • • • The second question presented by the appeal is whether or not A so conducted his business during the years 1917, 1918, and 1919 as to permit of his classification as a dealer in securities as that term is defined in article 1585 of Regulations 45 (1920 edition), to permit of his inventorying his securities, and using such inventories in computing his taxable net income for each of the said taxable years.

In an affidavit dated October —, 1921, A states:

In 18— I became a member of the Y. Stock Exchange and since that date down to January 1, 1918, and thereafter, have been a dealer in securities upon the Y Stock Exchange as a merchant in securities with an established place of business upon the said stock exchange, regularly engaged in the purchase of securities and their resale to customers, engaged in this business with a view to the gains and profits that may be derived therefrom. The years 1916 and 1917 are fairly representative of my established business upon the Y Stock Exchange. In each of these years I was daily upon the floor of the Exchange transacting my business of dealing in securities. The great bulk of the purchases and sales for my account were made by me individually upon the floor of the Exchange although occasionally an order was given to another member, paying him x dollars per hundred shares, and in and after the

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[1] Omitted: "A dealer in securities is not entitled to the benefits of section 208 with reference to the gain from the sale of securities."

summer of 1917 I ceased being on the floor during the entire session and when not there, handled my orders by telephone from my office to the exchange. All the securities thus purchased were purchased with the purpose and expectation of resale at a profit within a short period of time, and were not purchased in any instance for being held as an investment. In a business of the magnitude of that thus carried on by me it will happen at times that the market does not soon permit a resale at a profit, and wherever stocks have been held by me for a considerable period of time, it has always been because the opportunity of resale at a profit was not presented, and not because of a desire to hold the stocks as an investment. In dealing with millions of shares of stock prior to 1916 there were:

[fol. 70]

		Shares
On hand Dec. 31, 1915		1½ Z
Bought in 1916	24½	
Sold in 1916	23	
Balance of purchases		1½
Bought in 1917	11½	
Sold in 1917	10	
Balance of purchasers		1½
Total of stocks on hand Dec. 31, 1917		4½

All these stocks have subsequently been sold with the exception of ¼ Z shares of two certain stocks, of which there have been no sales for a long time.

The total number of stocks bought or sold in 1916 and 1917 was 69 Z shares. This represents dealings in 130 different kinds of stocks and bonds, counting one $1,000 bond as equivalent to 10 shares of stock. And in making the above balances it is not meant that the identical stocks were carried into the balances which is not the case, but simply that as a result of all the transactions there were the above quantities of different stocks on hand at the above-named dates.

From the evidence submitted it appears to the Committee that the greater portion of the securities purchased by A

during the years in question was acquired solely with a view to a quick turnover at a profit and not for investment purposes. In the affidavit referred to above it is shown that there was purchased in 1916 the equivalent of 24½ z shares of stock of the par value of $100 each (each $1,000 bond being taken as the equivalent of 10 shares of stock each of the par value of $100); that there was sold during the same year the equivalent of 23z shares, leaving the equivalent of 1½z shares on hand at the close of that year, or but 6.41 per cent plus of the total number of shares purchased. At the close of 1917 there remained on hand of the number of shares purchased during that year but 1½z shares, or but 14.2 per cent of the total number of shares purchased during that year. If the purchases and sales for the said two years are consolidated, it is shown that of a total of 36z shares purchased but 8.91 per cent [fol. 71] remained on hand at the end of that period, and in this connection A's statement that—

It is not meant that the identical stocks were carried into the balances, which is not the case, but simply that as a result of all the transactions there were the above quantities of different stocks on hand at the above-named dates—should be noted. Undoubtedly certain of the securities purchased were carried for considerable periods of time when the market did not permit of profitable sales. It is shown that, among others, two stocks amounting to ¼z shares were so carried. With respect to the first no report has been found in Poor's or Moody's Manual, but such publications show that no dividends have been paid upon the latter stock for some years, and therefore it can not be said that such stock was being held for investment purposes. In carrying securities for which there is no demand over from one trade year to another A acted no differently than would a merchant who carries over and includes in his opening inventory of one year goods which were purchased during the preceding year for which no demand resulted.

* * * * * * *

The records in the case show that A has been a member of the Y Stock Exchange since 18— and a member of the stock-exchange firm of M Company. As a member of the said firm A was regularly engaged in the purchase and sale of securities on the floor of the Y Stock Exchange for the

firm's customers and also for his own personal account, although it may be said that inasmuch as the greater portion of the purchases and sales made on his own account was put through the firm of M Company, A as a member of that firm acted for and in behalf of the said firm in purchasing and selling securities for A, one of its customers. It is claimed that at the place of business of M Company there was set aside a room for A's exclusive personal use and that this was considered his own established place of business and was used as such in directing the purchases and sale of securities on his own account and for the purpose of dealing in certain other commodities, it being stated that A is a member of the O Exchange and regularly deals in commodities handled in the O Exchange.

[fol. 72] In the opinion of the Committee the fact that A made the greater portion of his purchases and sales of securities through the agency of the M Company and did not make direct purchases of securities and direct sales to customers from a stock on hand, should not, in itself, preclude his classification as a dealer or merchant of securities. The term "merchant", as defined in Webster's New International Dictionary, includes "any one making a business of buying and selling commodities," "a trafficker," "trader." or "one who traffics on a large scale." It is not to be doubted that A trafficked on a large scale in securities dur- the years 1917, 1918 and 1919; that he was regularly engaged in the purchase and resale of securities for his own account either directly or through the agency of a brokerage firm with a view to the gains and profits to be derived therefrom; that he devoted a considerable portion of his time and attention to such transactions outside of the time and attention he devoted to similar transactions for and in behalf of the firm of the M Company and that the greater portion of the securities so purchased on his own account was not acquired for the purpose of deriving interest or dividends therefrom but for quick and profitable resales.

* * * * * * *

Judging from the records in the case it is not to be doubted that the time and attention devoted by A to the purchase and resale of securities were sufficient to constitute a trade or business, and it is the opinion of the Com-

mittee that if the statements appearing in his affidavit are true, and they have not been controverted in any way, the way and manner in which A traded in securities and the volume of business so transacted were such as to make necessary the inventorying of such securities at the close of each year in order to accurately determine what his net income from such trade or business was for each of the years in question.

* * * * * * *

It is further recommended that the action of the Income Tax Unit in holding that A was not, during the years 1917, 1918, and 1919, a dealer in securities and entitled to inven- [fol. 73] tory his securities at "cost or market whichever is lower" for purposes of Federal Income Tax, be reversed, and that he be classed as a dealer in securities and permitted to use inventories in computing the amount of his taxable net income for each of the years in question, there being excluded from such inventories such securities issued by the United States Government as it is admitted were purchased and held as an investment and not for purposes of resale. (A. R. R. 755, C. B. June, 1922, p. 225).

[fol. 74]

PETITIONER'S EXHIBIT #3 FOR IDENTIFICATION.

1927.

Inventory 12/31/27 Cost or Mkt.	Market 12/31/27.
$395,547.50	$384,584
384,584.	
10,963.50	

Error.

	Sold in 1928.	Inventoried at.	Cost.
200 Foundation	$9,792	$10,000	$20,550
600 Waitl Bond "A"	15,401	15,000	14,100
500 Eastman K	83,292.50	82,000	85,075
1,000 Continental Oil	21,746	20,000	22,000
1,000 Remington Rand	27,360	24,500	24,625
200 Rutland Pf	12,792	11,400	11,800
200 Oppenheim	16,392	16,000	15,200
1,000 Int. Tel. & Tel	146,160	148,000	147,925
500 Erie	32,042.50	32,500	31,812.50
	$364,978	$359,400	$373,087.50
	359,400		364,978
	5,578		8,109.50

[fol. 75]

1928.

Inventory Cost or Mkt. 12/31/28.	Market 12/31/28.		Sold in 1929.	Inventoried at.	Cost.
$328,121.50	$298,732	300 Woodworth Pf	$12,543	$11,700	$11,100
298,732.		1,500 Fansteel	36,040	18,000	22,687.50
		3,000 Remington Rand	99,680	90,000	86,712.50
29,389.50		3,000 Brown Boveri	62,880	48,000	49,525
		2,000 Ca Marconi	16,961.70	18,000	17,375
			$228,104.70	$185,700	$187,400
			185,700		
			42,404.70		
			228,104.70		
			187,400		
			40,704.70		

Securities sold in 1927 which were inventoried in 1926 we showed profit of $35,091.50
If they had not been inventoried we would have shown loss of 3,336

Stocks inventoried end of 1927 we took loss of $38,427.50
10,963.50

$27,464

(Here follow photolithographs of side folios 75a and 75b)

Form 1040
U. S. Internal Revenue

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RETAIN AND OBTAIN
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THE INSTRUCTIONS

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, INCLUDING OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

(PRINT NAME AND ADDRESS PLAINLY BELOW)

EDWARD SCHAFER
(Name)

120 BROADWAY
(Street and number, or rural route)

NEW YORK (Post office) NY (County) (State)

Occupation, Profession, or Business BROKER

DUPLICATE

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IF YOU NEED ASSISTANCE, GO TO DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

1. Are you a citizen or resident of the United States? citizen
2. If you filed a return for 1926, to what Collector's office was it sent? 2ND DIST N.Y.
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent MILDRED SCHAFER
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? —
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change —
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? 2

Item No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)		
1.	Salaries, Wages, Commissions, etc. (State name and address of person from whom received) SCHAFER BROS	$ 2500	$	$	
	PERFECT WINDOW REGULATOR CORP	1000		3500	—
2.	Income from Business or Profession. (Form Schedule A)				
3.	Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			15	901 56
	(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source				
4.	Income from Partnerships. (State name and address) SCHAFER BROS - 120 BROADWAY NY CITY			45	662 09
	(a) Income from Fiduciaries. (State name and address) ESTATE SAML M SCHAFER - C/O SCHAFER BROS 120 BROADWAY NY CITY				477 15
5.	Rents and Royalties. (From Schedule B)				
6.	Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			24	835 70
7.	Dividends on Stock of Domestic Corporations FROM PARTNERSHIP SCHAFER BROS $365 00 Jan '27 $730 00			15	494 03
8.	Taxable Interest on Liberty Bonds, etc. (From Schedule E)				
9.	Other Income (including dividends received on stock of foreign corporations). (State nature of income)				
	(a)				

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Nos. 6549 - 50 - 51
Schafer v. Helvering

U.S. Internal Revenue

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RETAIN AND OBTAIN FOR COPY OF THE INSTRUCTIONS

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000 OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

(PRINT NAME AND ADDRESS PLAINLY BELOW)

EDWARD SCHAFER (Name)

120 BROADWAY (Street and number, or rural route)

NEW YORK (Post office) NY (County) (State)

Occupation, Profession, or Business BROKER

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IF YOU NEED ASSISTANCE, GO TO DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

1. Are you a citizen or resident of the United States? citizen
2. If you filed a return for 1926, to what Collector's office was it sent? 2ND DIST NY.
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent MILDRED SCHAFER
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? —
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change —
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? 2

INCOME

	Amount received	Deduct amount shown in Schedule F	
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received) SCHAFER BROS	$ 2500	$	
PERFECT WINDOW REGULATOR CORP	1000		3500 —
2. Income from Business or Profession. (From Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			15 901 56
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			
4. Income from Partnerships. (State name and address) SCHAFER BROS - 120 BROADWAY NY CITY			45 662 09
(a) Income from Fiduciaries. (State name and address) ESTATE SAML M SCHAFER - C/O SCHAFER BROS 120 BROADWAY NY CITY			477 15
5. Rents and Royalties. (From Schedule B)			
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			74 835 70
7. Dividends on Stock of Domestic Corporations FROM PARTNERSHIP SCHAFER BROS $5365.00 less $715.00			15 495 03
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)			
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)			
(a)			
(b)			
10. TOTAL INCOME IN ITEMS 1 TO 9			$ 151 979 53

DEDUCTIONS

11. Interest Paid	$ 8011 56	
12. Taxes Paid. (Explain in Schedule F)	6492 16	
13. Losses by Fire, Storm, etc. (Explain in Table on page 2)		
14. Bad Debts. (Explain in Schedule F)		
15. Contributions. (Explain in Schedule F)	5275	
16. Other Deductions Authorized by Law. (Explain in Schedule F)		
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16		$ 10 778 72
18. NET INCOME (Item 10 minus Item 17)		$ 136 100 81

COMPUTATION OF TAX (See Instruction 21)

19. Earned Net Income (not over $20,000)	$ 24 000	00	31. Net Income (Item 18 above)	$ 136 100	81	42. Normal Tax (1½% of Item 36)	$ 60
20. Less Personal Exemption and Credit for Dependents (see Instruction 20)	43 00		32. Less Dividends (Item 7 above)	$ 15 495 03		43. Normal Tax (3% of Item 40)	120
21. Balance (Item 19 minus 20)	$ 15700	00	33. Interest on Liberty Bonds, etc. (Item 8)	—		44. Normal Tax (6% of Item 41)	5416 29
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)	$ 4000	—	34. Personal Exemption	3500		45. Surtax on Item 18 (see Instruction 21)	1888 16
23. Amount taxable at 3% (not over the second $4,000 of Item 21)	4000	—	35. Credit for Dependents	800		46. Tax on Net Income (total of Items 42, 43, 44, and 45)	$ 7484 45
24. Amount taxable at 5% (balance over $8,000 of Item 21)	7700	—	36. Total of Items 32, 33, 34, and 35	19795	03	47. Less Credit of 25% of Tax on Earned Net Income (Item 30)	196 25
25. Normal Tax (1½% of Item 22)	$ 60		37. Balance (Item 31 minus 36)	$ 116305	78	48. Balance (Item 46 minus 47)	$ 7288 20
26. Normal Tax (3% of Item 23)	120		38. Amount taxable at 1½% (not over the first $4,000 of Item 37)	4000	—	49. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)	655 84
27. Normal Tax (5% of Item 24)	385		39. Balance (Item 37 minus 38)	$ 112305	78	50. Total Tax (total of or difference between Items 48 and 49)	$ 7944 04
28. Surtax on Item 19 (see Instruction 21)	330		40. Amount taxable at 3% (not over the second $4,000 of Item 37)	4000	—	51. Less Income Tax Paid at Source	—
29. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 895		41. Amount taxable at 5% (balance over $8,000 of Item 37)	$ 108305	78	52. Income and Profits Taxes paid to a foreign country or U. S. possession	—
30. Credit of 25% of Item 29 (not over 25% of Items 26, 42, 43, and 44)	$ 1962	5				53. Balance of Tax (Item 50 minus Items 51 and 52)	$ 7944 04

TAXPAYER'S RECORD OF PAYMENTS

PAYMENT	AMOUNT	DATE	CHECK OR M. O. NO.	BANK OR OFFICE OF ISSUE
First				
Second				
Third				
Fourth				

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

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FEB 28

Nos. 6549 - 50 - 51
Schafer v. Helvering

75a

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instructions 4)

1. Total receipts from business or profession (state kind of business)

Cost of Goods Sold		Other Business Deductions	
2. Labor		10. Salaries, exclusive of "Labor," reported on Line 2, and exclusive of compensation for your services	
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (Itemize below or on separate sheet)		13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. Total (Lines 2 to 6, inclusive)		15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (itemized below or on separate sheet)	
9. Net Cost of Goods Sold (Line 7 minus Line 8)		17. Total (Lines 10 to 16, inclusive)	
		18. Total Deductions (Line 9 plus Line 17)	
		19. Net Profit (Line 1 minus Line 18) (Enter as Item 2)	

Note.—Do not deduct here or elsewhere compensation for your services.

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 4)

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
Annuities	1927	$ 246.61	—	$ 3,383.31	7	—	$ 7.83
Maturity of trading							

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired (Mo. Day Year)	3. Date Sold (Mo. Day Year)	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements and Capital Deductions	9. Net Gain or Loss (Enter 1/2 of Item 6)
Baby Vanadium Mines Stock	July 19 27	May 24 27	$ 11.27	—	$ 6.24 31	—	—	$ 2.46 69

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Total Amount Exempt From Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter as Item 8)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All	XXXXXX XX	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	XXXXXX XX	XXXXXX XX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	XXXXXX XX	XXXXXX XX
(d) Liberty 4% and 4½% Bonds, Treasury 3½%, 3¾%, 4%, and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000		
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Federal Jewish Charities	165.
Temple Emanuel	50.
Dr.	500.
Hudson Guild	10.
Long Beach Hospital	50.
	275.

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Cost or Other Basis	4. Previous Depreciation Allowed or Allowable	5. Value (If Discovery of Land)	6. Value as of March 1, 1913 (If Discovery of Land)	Amount of Depreciation Claimed This Year: 7. Previous Years	8. This Year

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost or Other Basis	4. Depreciation Allowed or Allowable Since Acquisition	5. Value (If Discovery of Land)	6. Insurance Received	7. Insurance and Salvage Value	8. Deductible Loss

Hos. 6549 - 50 - 51
Schafer v. Helvering

750

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[fol. 76] PETITIONER'S EXHIBIT #5 FOR IDENTIFICATION

E. S.—1927

3/27,464		$136,100.81
9,154.66		9,154.66
	Item 18	126,946.15
	Less exemptions	19,795.03
		107,151.12
	Item 38	4,000.00
		103,151.12
	Item 40	4,000.00
	Item 41	99,151.12
Item 42—1½%		$60.00
" 43—3%		120.00
" 44—5%		4,957.56
" 45—surtax		17,049.23
		22,186.79
" 47—Less credits		196.25
		21,990.54
" 49—Capital gain		655.84
" 53		$22,646.38
Tax paid	$24,935.04	equals difference of 25% on $9,154.66—5% on normal, 20% on surtax.
Would have paid	22,646.38	
Excess	$2,288.66	
100,000 @ 19		$11,660.00
26,946.15 @ 20		5,389.23
		$17,049.23

[fol. 77]

E. S. paid normal tax 5%	$5,415.29	
Would have paid	4,959.56	
	457.73	$457.73
Paid surtax	18,880.16	
Would have paid	17,049.23	
	1,830.93	1,830.93
		$2,288.66

(Here follow photolithographs of side folios 77a and 77b)

Form 1040
INTERNAL REVENUE

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DETACH AND RETAIN THIS COPY AND THE INSTRUCTIONS

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

DUPLICATE

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IF YOU NEED ASSISTANCE, GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

(PRINT NAME AND ADDRESS PLAINLY BELOW)

LEONARD SCHAFER
(Name)

120 BROADWAY
(Street and Number, or Rural Route)

NEW YORK (Post Office) NY (County) (State)

Occupation, Profession, or Business BROKER

1. Are you a citizen or resident of the United States? CITIZEN
2. If you filed a return for 1926, to what Collector's office was it sent? 2ND DIST NY
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent ADELINA T SCHAFER
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? —
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change —
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? ONE

Item and Instruction No.

INCOME

	Amount received	Expenses paid (Deduct on line 9)	
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received) SCHAFER BROS 120 BROADWAY NY CITY	$ 5000 00	$ —	$ 5000 00
2. Income from Business or Profession. (From Schedule A)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			—
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			6437 16
4. Income from Partnerships. (State name and address) SCHAFER BROS - 120 BROADWAY NY CITY			4669 09
(a) Income from Fiduciaries. (State name and address) EST of SAML M SCHAFER - C/O SCHAFER BROS 120 BROADWAY NY CITY			477 15
5. Rents and Royalties. (From Schedule B)			—
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			—

Bos. Schaf

Form 1040
Internal Revenue

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INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

(PRINT NAME AND ADDRESS PLAINLY BELOW)

LEONARD SCHAFER (Name)

120 BROADWAY (Street and number or R.F.D. number)

NEW YORK (Post office) NY (County) (State)

Occupation, Profession, or Business BROKER

DUPLICATE

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IF YOU NEED ASSISTANCE, GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

1. Are you a citizen or resident of the United States? CITIZEN
2. If you filed a return for 1926, to what Collector's office was it sent? 2ND DIST NY
3. Is this a joint return of husband and wife? No
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent ADELINA T SCHAFER
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? —
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change —
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? ONE

INCOME

	Amount received	Exempt and deductions	
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received) SCHAFER BROS 120 BROADWAY NY CITY	$ 5000	$ —	$ 5000 —
2. Income from Business or Profession. (From Schedule A)			—
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)			6427 16
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			—
4. Income from Partnerships. (State name and address) SCHAFER BROS - 120 BROADWAY NY CITY			447 69
(a) Income from Fiduciaries. (State name and address) EST of SAML M SCHAFER - % SCHAFER BROS 120 BROADWAY NY CITY			477 15
5. Rents and Royalties. (From Schedule B)			—
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)			2923 75
7. Dividends on Stock of Domestic Corporations From PARTNERSHIP - SCHAFER BROS $865.00 - DIVIDENDS $6000			9005 00
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)			—
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)			
(a)			
(b)			
10. TOTAL INCOME IN ITEMS 1 TO 9			$ 69506 19

DEDUCTIONS

11. Interest Paid	$ 1109 86	
12. Taxes Paid. (Explain in Schedule F)	3486 07	
13. Losses by Fire, Storm, etc. (Explain in Table on page 2)		
14. Bad Debts. (Explain in Schedule F)		
15. Contributions. (Explain in Schedule F)	49.5	
16. Other Deductions Authorized by Law. (Explain in Schedule F)		
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16		$ 5090 93
18. NET INCOME (Item 10 minus Item 17)		$ 64415 26

U. S. BOARD OF TAX APPEALS
DIVISION 8B
RECEIVED FOR IDENTIFICATION
FEB 28 1934
PETITIONER'S EXHIBIT 6
DOCKET

COMPUTATION OF TAX (See Instruction 31)

19. Earned Net Income (not over $20,000)	$ 20000	31. Net Income (Item 18 above)	$ 64415 26	43. Normal Tax (1½% of Item 38)	$ 60
20. Less Personal Exemption and Credit for Dependents (see Instruction 20)	4400	32. Less Dividends (Item 7 above)	$ 9005 00	44. Normal Tax (3% of Item 40)	120
21. Balance (Item 19 minus 20)	$ 16100	33. Interest on Liberty Bonds, etc. (Item 8)	—	45. Normal Tax (5% of Item 41)	3125 51
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)	$ 4000	34. Personal Exemption	3500	46. Surtax on Item 18 (see Instruction 32)	5110 58
23. Amount taxable at 3% (not over the second $4,000 of Item 21)	4000	35. Credit for Dependents	400	47. Tax on Net Income (total of Items 42, 43, 44, and 45)	$ 7456 10
24. Amount taxable at 5% (balance over $8,000 of Item 21)	8100	36. Total of Items 32, 33, 34, and 35	12905 00	48. Less Credit of 25% of Tax on Earned Net Income (Item 30)	301 25
25. Normal Tax (1½% of Item 22)	$ 60	37. Balance (Item 31 minus 36)	$ 51510 26	49. Balance (Item 47 minus 48)	$ 7154 85
26. Normal Tax (3% of Item 23)	120	38. Amount taxable at 1½% (not over the first $4,000 of Item 37)	4000	50. Adjustment for Capital Gain or Loss (12½% of Column 5, Schedule D)	—
27. Normal Tax (5% of Item 24)	405	39. Balance (Item 37 minus 38)	$ 47510 26	51. Total Tax (total of or difference between Items 49 and 50)	$ 7154 85
28. Surtax on Item 19 (see Instruction 21)	320	40. Amount taxable at 3% (not over the second $4,000 of Item 37)	4000 —	52. Less Income Tax Paid at Source	—
29. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 905	41. Amount taxable at 5% (balance over $8,000 of Item 37)	43510 26	53. Income and Profits Taxes paid to a foreign country or U. S. possession	—
30. Credit of 25% of Item 29 (not over 25% of Items 38, 42, 43, and 44)	$ 301 25			54. Balance of Tax (Item 51 minus Items 52 and 53)	$ 7154 85

TAXPAYER'S RECORD OF PAYMENTS

Payment	Amount	Date	Check or M. O. No.	Bank or Collector
First				
Second				
Third				
Fourth				

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted subject to payment

Nos. 6549 - 50 - 51
Schafer v. Helvering

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) ..... $

Cost of Goods Sold		Other Business Deductions	
2. Labor	$	10. Salaries, exclusive of "Labor," reported on Line 2, and exclusive of compensation for your services	$
3. Material and supplies		11. Interest on business indebtedness to others	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (itemize below or on separate sheet)		13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. Total (Lines 2 to 6, inclusive)	$	15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (itemized below or on separate sheet)	
9. Net Cost of Goods Sold (Line 7 minus Line 8)	$	17. Total (Lines 10 to 16, inclusive)	$
		18. Total Deductions (Line 9 plus Line 17)	$
		19. Net Profit (Line 1 minus Line 18) (Enter as Item 2)	$

Note.—Do not deduct here or elsewhere compensation for your services.

Explanation of deductions claimed on Lines 5 and 16 .....

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 3)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation Allowable since March 1, 1913	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 4)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7 .....

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
Securities	1927	$ 16,000 —	$ —	$ 159,131 25	$ —	$ —	$ 3923 75

State how property was acquired .....

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired Mo. Day Year	3. Date Sold Mo. Day Year	4. Amount Received	5. Depreciation Allowable since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements, and Capital Deductions	9. Net Gain or Loss (Enter Gain or Loss on Item 6)
			$	$	$	$	$	$

State how property was acquired .....

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Principal Amount Exempt from Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter as Item 5)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXXX XX	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	XXXXXX XX	XXXXXX XX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	XXXXXX XX	XXXXXX XX
(d) Liberty 4% and 4¼% Bonds, Treasury 3½%, 3¾%, 4%, and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Taxes - Real Estate 1857.62 - Key State Income Tax 1128.43 - Property 500 -

Charity - Brooklyn Federation $40 - Federation Jewish Charities $150 - Neuro Federation $20 - Long Beach Hospital $10
Lake Placid Hospital 2542 American Overseas Fund $50 - Eisenhower Day Nursery 1022
West End Collegiate Church $15 - Irving Institute $10

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (Buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Estimated Life After Acquirement	5. Cost (Exclusive of Land)	6. Value as of March 1, 1913 (Exclusive of Land)	Amount of Depreciation Claimed On: 7. Previous years	8. This year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Depreciation and Improvements	6. Depreciation Allowable since Acquisition	Insurance and Salvage Value	8. Deductible Loss
		$	$	$	$	$	$

Nos. 6549 - 50 - 51
Schafer V. Helvering

PETITIONER'S EXHIBIT #7 FOR IDENTIFICATION

L. S.—1927

Line 18 and 31—Net income reported	$64,415.26
Dif. Stocks at cost—less	9,154.66
Line 18 and 31, revised	55,260.60
Less exemption	12,905.04
Item 37	42,355.56
" 38	4,000.00
" 39	38,355.56
" 40	4,000.00
" 41	34,355.56
Item 42—1½%	$60.00
" 43—3%	120.00
" 44—5% of Item 41	1,717.78
" 45—Surtax	3,696.48
" 46	5,594.26
" 47—Less credit 25%	201.25
" 48	5,393.01
" 49—Capital gain	0.00
" 53	$5,393.01

[fol. 78]

Tax paid	$7,264.85	17% on $415.36	$70.59
Would have paid	5,393.01	16% on $4,000.00	640.00
		15% on $4,000.00	600.00
Excess	1,871.84	14% on $739.40	103.52
		5% on $9,154.66	457.73
			$1,871.84

$52,000—13%	$3,240.00
$3,260.60—14%	456.48
	$3,696.48

		Dif.
L. S. paid normal tax, 5%	$2,175.51	
Would have paid	1,717.78	
	457.73	457.73
Paid surtax	5,110.59	
Would have paid	3,696.48	
	1,414.11	1,414.11
		$1,871.84

(Here follow photolithographs of side folios 78a and 78b)

Form 1040
U. S. Internal Revenue

DUPLICATE

Copy

DETACH AND RETURN THIS COPY AND THE INSTRUCTIONS

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

DUPLICATE

Copy

IF YOU NEED ASSISTANCE, GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

(PRINT NAME AND ADDRESS PLAINLY BELOW)

ALGERNON S SCHAFER
(Name)

45 HULLS TERRACE
(Street and number, or rural route)

YONKERS (Post office) NY (County) (State)

Occupation, Profession, or Business BROKER

1. Are you a citizen or resident of the United States? CITIZEN
2. If you filed a return for 1926, to what Collector's office was it sent? ALBANY
   Is this a joint return of husband and wife? No
   State name of husband or wife if a separate return was made and the Collector's office where it was sent IRENE S SCHAFER
3. Were you married and living with husband or wife on the last day of your taxable year? YES
4. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? —
5. If your status in respect to questions 3 and 4 changed during the year, state date and nature of change —
6. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? ONE

INCOME

	Amount received	Expenses paid (Required in subdivision 2)	
1. Salaries, Wages, Commissions, etc. (State names and addresses of persons from whom received) SCHAFER BROS 120 BROADWAY NY CITY	$ 5000 —	$ —	$ 5000 —
			—
			—
2. Income from Business or Profession. (From Schedule A)			—
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax has been paid at source)			36 90
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			—
4. Income from Partnerships. (State names and address) SCHAFER BROS 120 BROADWAY NY CITY			663 09
			—
(a) Income from Estates or Trusts. Estate of Sam M Schafer & Schafer Bros			1332 60

COLLECTOR OF TAX AFFIXES (Initials in ink) FEB 28 1931 EXHIBIT

Form 1040
U. S. Internal Revenue

DUPLICATE

Copy 1

DETACH AND RETURN THIS COPY AND THE INSTRUCTIONS

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $5,000
OR INCOMES, REGARDLESS OF AMOUNT, FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1927

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1928

(PRINT NAME AND ADDRESS PLAINLY BELOW)

ALGERNON S SCHAFER
(Name)

45 HULLS TERRACE
(Street and number, or Rural route)

YONKERS NY
(Post office) (County) (State)

Occupation, Profession, or Business BROKER

DUPLICATE

Copy 1

IF YOU NEED ASSISTANCE, GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

1. Are you a citizen or resident of the United States? CITIZEN
2. If you filed a return for 1926, to what Collector's office was it sent? ALBANY
   Is this a joint return of husband and wife? No
   State name of husband or wife if a separate return was made and the Collector's office where it was sent IRENE S SCHAFER
5. Were you married and living with husband or wife on the last day of your taxable year? YES
6. If not, were you on the last day of your taxable year supporting one or more persons living in your household who are closely related to you? —
7. If your status in respect to questions 5 and 6 changed during the year, state date and nature of change —
8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? ONE

U.S. BOARD OF TAX APPEALS — DIVISION NO. — DOCKET NO. — FEB 28 1931 — FILED — EXHIBIT — RESPONDENT

INCOME		
1. Salaries, Wages, Commissions, etc. (State name and address of person from whom received) SCHAFER BROS 120 BROADWAY NYCITY	$ 5000 —	$ 5000 —
2. Income from Business or Profession. (From Schedule A)		—
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest upon which a tax was paid at source)		336 90
(a) Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source		—
4. Income from Partnerships. (State name and address) SCHAFER BROS 120 BROADWAY, NY CITY		45663 09
		—
(a) Income from Fiduciaries. (State name and address) ESTATE OF SAML M SCHAFER - % SCHAFER BROS 120 BROADWAY NYCITY		477 15
5. Rents and Royalties. (From Schedule B)		—
6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)		6227 35
7. Dividends on Stock of Domestic Corporations SCHAFER BROS 8365 00 DIRECT 640 00		9005 04
8. Taxable Interest on Liberty Bonds, etc. (From Schedule E)		—
9. Other Income (including dividends received on stock of foreign corporations). (State nature of income)		
(a)		—
(b)		—
10. TOTAL INCOME IN ITEMS 1 TO 9		$ 66499 53
DEDUCTIONS		
11. Interest Paid	$ 29 85	
12. Taxes Paid. (Explain in Schedule F)	2165 28	
13. Losses by Fire, Storm, etc. (Explain in Table on page 3)		
14. Bad Debts. (Explain in Schedule F)		
15. Contributions. (Explain in Schedule F)	574 25	
16. Other Deductions Authorized by Law. (Explain in Schedule F)		
17. TOTAL DEDUCTIONS IN ITEMS 11 TO 16		$ 2769 38
18. NET INCOME (Item 10 minus Item 17)		$ 63730 15

COMPUTATION OF TAX (See Instruction 21)

19. Earned Net Income (not over $30,000)	$ 20 000	31. Net Income (Item 18 above)	$ 63730 15	42. Normal Tax (1½% of Item 35)	$ 60
20. Less Personal Exemption and Credit for Dependents (see Instruction 20)	3900	32. Less Dividends (Item 7 above)	$ 9005 04	43. Normal Tax (3% of Item 40)	120
21. Balance (Item 19 minus 20)	$ 16100	33. Interest on Liberty Bonds, etc. (Item 8)	—	44. Normal Tax (5% of Item 41)	2140 60
22. Amount taxable at 1½% (not over the first $4,000 of Item 21)	$ 4000	34. Personal Exemption	3500	45. Surtax on Item 18 (see Instruction 21)	4996 60
23. Amount taxable at 3% (not over the second $4,000 of Item 21)	4000	35. Credit for Dependents	400	46. Tax on Net Income (total of Items 42, 43, 44, and 45)	$ 7316 80
24. Amount taxable at 5% (balance over $8,000 of Item 21)	8100	36. Total of Items 32, 33, 34, and 35	13905 04	47. Less Credit of 25% of Tax on Earned Net Income (Item 30)	201 25
25. Normal Tax (1½% of Item 22)	$ 60	37. Balance (Item 31 minus 36)	$ 50825 11	48. Balance (Item 46 minus 47)	$ 7115 55
26. Normal Tax (3% of Item 23)	120	38. Amount taxable at 1½% (not over the first $4,000 of Item 37)	4000	49. Adjustment for Capital Gain or Loss (12½% of Column 9, Schedule D)	—
27. Normal Tax (5% of Item 24)	405	39. Balance (Item 37 minus 38)	$ 46825 11	50. Total Tax (total of or difference between Items 48 and 49)	$ 7115 55
28. Surtax on Item 19 (see Instruction 21)	330	40. Amount taxable at 3% (not over the second $4,000 of Item 37)	4000	51. Less Income Tax Paid at Source	—
29. Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	$ 915	41. Amount taxable at 5% (balance over $8,000 of Item 37)	$ 42825 11	52. Income and Profits Taxes paid to a foreign country or U. S. possession	—
30. Credit of 25% of Item 29 (not over 25% of Items 39, 42, 43, and 44)	$ 201 25			53. Balance of Tax (Item 50 minus Items 51 and 52)	$ 7115 55

TAXPAYER'S RECORD OF PAYMENTS

Purchase	Amount	Date	Check or M. O. No	Bank or Office of Issue
First				
Second				
Third				

Nos. 6649 - 50 - 51
Schafer v. Helvering

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business) ..... $

Cost of Goods Sold

2. Labor	$	
3. Material and supplies		
4. Merchandise bought for sale		
5. Other costs (itemize below or on separate sheet)		
6. Plus inventory at beginning of year		
7. Total (Lines 2 to 6, inclusive)	$	
8. Less inventory at end of year		
9. Net Cost of Goods Sold (Line 7 minus Line 8)	$	

Note.—Do not deduct here or elsewhere compensation for your services.

Other Business Deductions

10. Salaries, exclusive of "Labor," reported on Line 2, and exclusive of compensation for your services	$	
11. Interest on business indebtedness to others		
12. Taxes on business and business property		
13. Losses by fire, storm, etc. (explain in table provided therefor at foot of page)		
14. Bad debts arising from sales or services		
15. Depreciation, obsolescence, and depletion (explain in table provided therefor at foot of page)		
16. Rent, repairs, and other expenses (itemized below or on separate sheet		
17. Total (Lines 10 to 16, inclusive)	$	
18. Total Deductions (Line 9 plus Line 17)		$
19. Net Profit (Line 1 minus Line 18) (Enter as Item 2)		$

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 5)

1. Kind of Property	2. Amount Received	3. Cost	4. Value as of March 1, 1913	5. Depreciation (Explain in table at foot of page)	6. Repairs	7. Other Expenses (Itemize below)	8. Net Profit (Enter as Item 4)
	$	$	$	$	$	$	$

Explanation of deductions claimed in Column 7

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable since Acquisition	5. Cost	6. Value as of March 1, 1913	7. Subsequent Improvements	8. Net Profit (Enter as Item 6)
Securities	1926 & 1927	$ 202604 85	$	$ 196652 50	$	$ —	$ 6027 35

State how property was acquired

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 6a)

1. Kind of Property	2. Date Acquired (Mo. Day Year)	3. Date Sold (Mo. Day Year)	4. Amount Realized	5. Depreciation Allowable since Acquisition	6. Cost	7. Value as of March 1, 1913	8. Subsequent Improvements and Capital Deductions	9. Net Gain or Loss (Enter 12½% of Item 9)
			$	$	$	$	$	$

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 8)

1. Obligations or Securities	2. Interest Received or Accrued	3. Amount Owned	4. Par Value Amount Exempt from Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter as Item 10)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	XXXXXX	XXXXXX
(b) Securities issued under Federal Farm Loan Act, or under such Act as Amended			All	XXXXXX	XXXXXX
(c) Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of possessions of the United States			All	XXXXXX	XXXXXX
(d) Liberty 4% and 4¼% Bonds, Treasury 3½%, 3¾%, 4%, and 4¼% Bonds, Treasury Certificates of Indebtedness, and Treasury (War) Savings Certificates			$5,000	$	$
(e) Treasury Notes			None		

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, 15, AND 16

Taxes - Real Estate - $5826 Automobile 15.00 N.Y. State Income Tax 1093.42 Luxury 5.00 -

Contributions - Hebrew Orphan Asson 25 Foreign Relief Assn 5 Hebrew Orphan Asylum 100
Jewish Publication Society 5 Jewish Theological Seminary 10 Charity Organization 10
Chamber of Commerce 25.00 Jewish Federation 115.00 Cancer & York Co Assn 31.25 Big Brothers 5
SPCA NY 5.00 - YMCA Yonkers 6.00 Junior Society - Temple 5.00 SPCA Yonkers 10 -
National Security League 5 Stadium Concerts 25 Officers Assn 9 2nd Regiment 25 -
YMCA Marblehead 5 - Orange Home 10 - NY League - Hard of Hearing 15
Community Club - Jewish Fed Yonkers 100 - Am Red Star - 5 -

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquirement	5. Cost (Exclusive of Land)	6. Value as of March 1, 1913 (Exclusive of Land)	Amount of Depreciation Charged Off: 7. Previous years	8. This year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 13

1. Kind of Property	2. Date Acquired	3. Cost	4. Value as of March 1, 1913	5. Subsequent Improvements	6. Depreciation Allowable since Acquisition	7. Insurance and Salvage Value	8. Net Taxable Loss
		$	$	$	$	$	$

Nos. 6649 - 50 - 51
Schafer v. Helvering

PETITIONER'S EXHIBIT #9 FOR IDENTIFICATION

A. S.—1927

Lines 18 and 31—Net Income reported			$63,730.15
Dif. stocks at cost—less			9,154.66
Lines 18 and 31, revised			54,575.49
Less exemption			12,905.04
Item 37			41,670.45
" 38			4,000.00
" 39			37,670.45
" 40			4,000.00
" 41			33,670.45

[fol. 79]

Item 42—1½%			$60.
" 43—3%			120.
" 44—5%			1,683.52
" 45—Surtax			3,600.57
" 46			$5,464.09
" 47—Less credit			201.25
" 48			5,262.84
" 49—Capital gain			0
" 53			5,262.84
Tax paid	$7,116.83	16% on $3,730.15	$596.82
Would have paid	5,262.84	15% on $4,000.	600
		14% on $1,424.61	199.44
Excess	1,853.99	5% on $9,154.66	457.73
			$1,853.99
$52,000, 13%			$3,240
2,575.49, 14%			360.57
			$3,600.57

A. S. paid normal tax 5%	$2,141.26	
Would have paid	1,683.52	
	457.74	457.74
Paid surtax	4,996.82	
Would have paid	3,600.57	
	1,396.25	1,396.25
		$1,853.99

[fol. 80] [File endorsement omitted]

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Docket No-. 72370, 72373, 72374 (Consolidated Proceedings)

[Title omitted]

PRÆCIPE FOR RECORD—Filed August 6, 1935

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, and within the time allowed by law, transmit to the Clerk of the United States Court of Appeals of the District of Columbia, duly certified copies of the following documents and records in the above-entitled cause in connection with the petition for review by the said Court of Appeals for the District of Columbia, heretofore filed by the petitioners:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board, as follows:
(a) The Petition (including notice of deficiency attached thereto) filed by each of said petitioners.
(b) Answer filed by respondent to each of said petitions.
3. Findings of fact, opinion, and decision of the Board.
4. Statement of evidence, together with proof of service of copy of same upon respondent.
5. The several exhibits made a part of said statement of evidence by reference, including: Respondent's Exhibit "A"; Petitioners' Exhibit 1, and Petitioners' Exhibits for Identification 2, 3, 4, 5, 6, 7, 8 and 9.

6. The petition for review filed by petitioners, together with proof of service of notice of filing of petition for review and of service of copy of petition for review.

[fol. 81] 7. Stipulation of venue.

8. This præcipe.

Eugene Untermyer, Attorney for Petitioners, 30 Pine Street, New York, N. Y. 716 Investment Building, Washington, D. C.

Agreed to. Robert H. Jackson, Counsel for Respondent.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 82] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 72370, 72373 and 72374

[Title omitted]

ORDER ENLARGING TIME

For cause appearing of record, it is

Ordered: That the time for transmission and delivery of the record sur petition for review of the above entitled proceeding in the United States Court of Appeals for the District of Columbia, be and it is hereby extended to September 23, 1935.

(Signed) C. Rogers Arundell, Member.

Dated, Washington, D. C., Aug. 20, 1935
jd.

Now, Aug. 30, 1935, the foregoing is certified from the record as a true copy.

B. D. Gamble, Clerk, U. S. Board of Tax Appeals.
(Seal U. S. Board of Tax Appeals.)

[File endorsement omitted.]

[fol. 83] Thursday, February 6th, A. D. 1936.

No. 6549

ALGERNON S. SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

No. 6550

EDWARD SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

and

No. 6551

LEONARD SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

The argument in the above entitled causes was commenced by Mr. Edgar J. Goodrich, attorney for petitioners, and was continued by Mr. Carlton Fox, attorney for respondent, and was concluded by Mr. Edgar J. Goodrich, attorney for petitioners. Petitioners allowed to file supplemental memorandum. (Mr. Justice Van Orsdel not sitting.)

[fol. 84] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Nos. 6549, 6550, 6551

ALGERNON S. SCHAFER, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

EDWARD SCHAFER, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

LEONARD SCHAFER, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

On Petition for Review of Decisions of the United States Board of Tax Appeals

Argued February 6, 1936. Decided March 2, 1936

Edgar J. Goodrich, of Washington, D. C., for petitioners.
Frank J. Wideman, Assistant Attorney General, Sewall Key, Carlton Fox, Robert H. Jackson, and Hugh Brewster, all of Washington, D. C., for respondent.

Before Martin, C. J., and Robb, Groner, and Stephens, JJ.

GRONER, J.:

This is a petition to review an order of the Board of Tax Appeals finding deficiencies for the calendar year 1929. The question is whether petitioners are entitled to have their income for the taxable year computed by reference to inventories of securities taken at market value at the beginning and end of the year.

Petitioners were general partners in the partnership of Schafer Bros., New York City. The partnership was engaged in the general stock brokerage business. One of the

partners owned a Stock Exchange seat and was the floor member. The other two were the office members. All three were actively engaged in the business. "The partnership was a dealer and merchant in securities on commission and on margin. Such business activity comprised the execution of orders for purchase or sale of securities by its customers either on the Exchange, the Curb, or wherever the particu-[fol. 85] lar securities were listed." It participated in syndicate and underwriting operations. "Also, as a part of its business activities, but with no relation to its customers' accounts nor to the execution of orders for its customers, the partnership has always to some extent, bought and sold securities for its own account. * * * Such trading was conducted through orders executed by Leonard Schafer [the floor member] or other brokers and had no relation to or connection with the accounts of the partnership's customers, but were purchased in expectation of a rise in the market price and for the purpose of resale, to any buyer, at a profit for the partnership's own account. Such securities were not purchased for investment." Sales of the securities purchased were made through orders given Leonard Schafer or other brokers and the identity of the buyer was not known. The record of purchases and sales was kept in a separate account book. Prior to 1925 the partnership carried its own securities at cost, but beginning with that year and including 1929 it inventoried, at fair market value, such securities at the beginning and end of the year. "The change was made as a matter of business policy, but with knowledge of the effect of the taxing statutes. The New York Stock Exchange, since about 1923, has required its members to inventory securities for the purpose of certain Exchange questionnaires."

The Commissioner determined that the partnership was not a dealer with respect to such securities and disallowed the use of inventories, and increased the partnership income by the amount of $511,667.00. The Board sustained the Commissioner, on the ground that in the purchase and sale of stocks for its own account the firm was a speculator and not a dealer within the provisions of the statute and regulations.

Petitioners rely upon Commissioner v. Stevens (Second Circuit), 78 F. (2d) 713, and Commissioner v. Charavay

(Third Circuit), 79 F. (2d) 406, and insist that the facts in those cases and in this are indistinguishable; and in our opinion this is correct. If we follow them, we should be content to accept their conclusions as our own; but after careful thought, and with great deference, we are constrained to adopt a different view.

The applicable statute is Section 22 of the Revenue Act of 1928. Subsection (c) provides:

"Whenever in the opinion of the Commissioner the use of inventories is necessary in order to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income".

The Section is general and casts upon the Commissioner the duty of adapting it to the conditions it was intended to cover, and gives to his regulation the force of law. The decision, therefore, necessarily turns upon the interpretation of the Commissioner's regulation. It is as follows:

"Art. 105. Inventories by dealers in securities.—A dealer in securities, who in his books of account regularly inventories unsold securities on hand either—

(a) At cost;

(b) At cost or market, whichever is lower; or

(c) At market value,

[fol. 86] may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be adhered to in subsequent years, unless another be authorized by the Commissioner. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not

for investment. Taxpayers who buy and sell or hold securities for investment or speculation and not in the course of an established business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule."

Slightly paraphrased, the regulation is that a dealer in securities, with an established place of business, regularly engaged as a merchant in the purchase of securities, not for investment, but for resale to customers with a view to gain and profit, is entitled to have his income computed on inventories.

It should, however, be borne in mind in considering the regulation that Section 22 (c) is not applicable alone to dealers in stocks and bonds. It covers all classes of business. In the case of the ordinary storekeeper the regulation would necessarily differ somewhat from that in the case of a dealer in securities, but only in details. As promulgated by the Commissioner, the underlying principle in each is the same. There has to be a license or right to conduct the business, a holding out to the public, an offering of wares or securities for sale, and customers to sell to. In the case we are considering petitioners' firm was licensed to do a stock brokerage business, which we assume would include buying and selling on commission and dealing generally in what are popularly known as marketable securities. Petitioners have an established place of business and held themselves out to their customers as authorized and qualified to buy or sell for them, as broker, shares of stocks and bonds; but there is not a word of evidence that they likewise hold themselves out as having on hand securities for sale on their own account, or that they personally or through salesmen carry on the business of selling their own securities to their own customers. There is no evidence that they offer for sale to the public securities in the sense that a merchant offers for sale his stock in trade, and the fair conclusion from their own evidence is that they never thought of themselves as merchants or as engaged in merchandising as that term is commonly understood.

What they did was to use their funds and their expert knowledge of market conditions in the purchase on the exchanges of stocks and bonds from brokers, in anticipation of a rise in price, and the subsequent sale of the same stocks

and bonds, under the same conditions, through the same or other brokers. The motive was neither more nor less than that which induces every such transaction by the public generally—transactions which occur daily on the exchanges and which are universally known and designated as speculations.—There is a distinction between this plan and the plan more or less common a few years ago with certain [fol. 87] large banking institutions and their subsidiaries of setting up so-called investment departments to underwrite and purchase bonds and stocks, and to peddle them out to customers through solicitation or contacts. In such cases the analogy to ordinary merchandising is nearly or quite complete. The element of resale to customers—i. e., people who regularly or repeatedly deal with them—necessitates both possession of the thing to be sold and customers to sell it to. In the present case the last element is wholly lacking. Petitioners never had in mind disposing of their securities to their partnership's customers. If, for instance, one of the latter had ordered the purchase for his account of 1,000 shares of Steel stock, it is unthinkable that petitioners would in such case have made delivery to him of 1,000 shares of that stock belonging to themselves. And this is obvious, because that was not their manner of doing business. The fair inference from their testimony is that their transactions in the stocks and bonds in question, both as to purchase and sale, were and were intended to be consummated only through the instrumentality of brokers on some of the exchanges. In this, they neither had a customer nor knew one, and hence were not—"*one who as a merchant buys securities and sells them to customers*". Their stock brokerage business was their profession. The buying and selling for their own account was a side line which is none the less speculation because done by one engaged in the security business. In this view we cannot follow the conclusion reached in the Stevens case nor concede, as is stated there, that when petitioners' firm purchased shares of stock, these were "its wares" or stock in trade, nor when it sold them through its own broker to another broker, the latter broker was the sort of customer contemplated by the regulation.

No more can we accept the statement in the Charavay case that the controlling factor "is not the method by which the partnership obtained customers or made sales," but "it

is the fact that the partnership purchased securities and held them, not for investment or speculation, but for resale at a profit to any one who desired to buy." We think, on the contrary, that the element of speculation alone inheres in a transaction of the nature we are concerned with, and that it is inaccurate to call it anything else.

But counsel for petitioners point to the language of the concluding paragraph of the regulation as sustaining their view. It reads: "Taxpayers who buy and sell or hold securities for investment or speculation *and* not in the course of an established business, * * * are not dealers in securities within the meaning of this rule." The use of the word "and" which we have italicized is unfortunate and gives ground to argue that neither investors nor speculators are forbidden the use of inventories if the transactions are made in the course of an established business. But as to this we agree with the view expressed by Judge Learned Hand in Seeley v. Commissioner, 77 F. (2d) 323, in reply to the same argument—that though the use of the word "and" rather than "or" may throw a faint shadow across the earlier words, it cannot obscure them.

Counsel also tell us that petitioners are entitled to inventory their securities for the year in question in reliance upon the practice of the Bureau of Internal Revenue in prior years and the expressed views of the Bureau on the subject. It is said that regularly for four years preceding [fol. 88] 1929 the partnership inventoried its securities with the knowledge and approval of the Bureau. It is also said, and doubtless is true, that during some of those years—perhaps all of them—the method of computing income now insisted on by the Commissioner, if then applied, would have resulted in a smaller tax; but granting this, and granting also that the Bureau's willingness to leave undisturbed the practice until 1929 was induced by the larger tax accruing to the government, such action or lack of action cannot estop the government now from insisting upon compliance with its laws. Wrongs between man and man, which shock the conscience and justify the intervention of a court of equity, cannot affect or prejudice the sovereign in the right to demand the full measure of the statute. Whoever deals with the government does so with notice that no agent can, by neglect or acquiescence, commit it to an erroneous interpretation of the law. Helvering v. Trust Co., 292 U. S. 455-466; Seeley v. Commissioner, 77 F. (2d) 323.

True enough, petitioners might have altogether avoided the tax now assessed by selling their stocks and immediately rebuying them, and it is likely they would have done so but for their reliance upon the repeated approval of the other method by the Bureau; but even that cannot help them if the old interpretation of the regulation by the Bureau was wrong—and it is convincingly clear to us it was.

Order affirmed.

A true copy. Test.

—— ——, Clerk of the United States Court of Appeals, for the District of Columbia.

[fol. 89] Monday, March 2nd, A. D. 1936.

January Term, 1936

No. 6549

ALGERNON S. SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

Petition for Review from the Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Groner.

March 2, 1936.

Mr. Justice Van Orsdel took no part in the consideration or decision of this case.

[fol. 90] Monday, March 2nd, A. D. 1936.

January Term, 1936

No. 6550

EDWARD SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

Petition for Review from the Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Groner.

March 2, 1936.

Mr. Justice Van Orsdel took no part in the consideration or decision of this case.

[fol. 91] Monday, March 2nd, A. D. 1936.

January Term, 1936

No. 6551

LEONARD SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

Petition for Review from the Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the

True enough, petitioners might have altogether avoided the tax now assessed by selling their stocks and immediately rebuying them, and it is likely they would have done so but for their reliance upon the repeated approval of the other method by the Bureau; but even that cannot help them if the old interpretation of the regulation by the Bureau was wrong—and it is convincingly clear to us it was.

Order affirmed.

A true copy. Test.

—— ——, Clerk of the United States Court of Appeals, for the District of Columbia.

[fol. 89] Monday, March 2nd, A. D. 1936.

January Term, 1936

No. 6549

ALGERNON S. SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

Petition for Review from the Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Groner.

March 2, 1936.

Mr. Justice Van Orsdel took no part in the consideration or decision of this case.

[fol. 90] Monday, March 2nd, A. D. 1936.

January Term, 1936

No. 6550

EDWARD SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

Petition for Review from the Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Groner.

March 2, 1936.

Mr. Justice Van Orsdel took no part in the consideration or decision of this case.

[fol. 91] Monday, March 2nd, A. D. 1936.

January Term, 1936

No. 6551

LEONARD SCHAFER, Petitioner,

vs.

GUY T. HELVERING, Commissioner of Internal Revenue

Petition for Review from the Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the

said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Groner.

March 2, 1936.

Mr. Justice Van Orsdel took no part in the consideration or decision of this case.

[fol. 92] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 6549

ALGERNON S. SCHAFER, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

No. 6550

EDWARD SCHAFER, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

No. 6551

LEONARD SCHAFER, Petitioner,

v.

GUY T. HELVERING, Commissioner of Internal Revenue, Respondent

DESIGNATION OF RECORD

Come now petitioners herein by their counsel and request the Clerk of this honorable Court to prepare a transcript of record on application for a Writ of Certiorari to the Supreme Court of the United States in the above entitled cases, and including the following;

(1) Transcript of record.
(2) Minute entry of argument.
(3) Opinion.

[fol. 93] (4) Decree.
(5) This designation of record.
(6) Certificate of Clerk.

Algernon Schafer, Edward Schafer, Leonard Schafer, by Edgar J. Goodrich, Counsel for Petitioners, 716 Investment Building, Washington, D. C.

Service accepted this 9th day of March, 1936.
Robert H. Jackson, Attorney for Respondent.

[fol. 94] [Endorsed:] United States Court of Appeals for the District of Columbia. No. 6549. Algernon S. Schafer, Petitioner, v. Guy T. Helvering, Commissioner of Internal Revenue, Respondent. No. 6550. Edward Shafer, Petitioner, v. Guy T. Helvering, Commissioner of Internal Revenue, Respondent. No. 6551. Leonard Schafer, Petitioner, v. Guy T. Helvering, Commissioner of Internal Revenue, Respondent. Designation of Record. United States Court of Appeals for the District of Columbia. Filed Mar. 9, 1936. Henry W. Hodges, Clerk. Edgar J. Goodrich, Attorney at Law, Investment Building, Washington, D. C.

[fol. 95] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, Clerk of the United States Court of Appeals for the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 94, inclusive, constitute a true copy of the transcript of record and proceedings of the said Court of Appeals as designated by counsel in the cases of Algernon S. Schafer, Petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue; Edward Schafer, Petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue; Leonard Schafer, Petitioner, vs. Guy T. Hervering, Commissioner of Internal Revenue, Nos. 6549, 6550, 6551, January Term, 1936, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 10th day of March, A. D. 1936.

Henry W. Hodges, Clerk of the United States Court of Appeals for the District of Columbia, by Moncure Burke, Deputy Clerk. (Seal United States Court of Appeals for the District of Columbia.)

[fol. 96] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 24

ORDER ALLOWING CERTIORARI—Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 97] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 25

ORDER ALLOWING CERTIORARI—Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 98] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 26

ORDER ALLOWING CERTIORARI—Filed May 18, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 40,449, 40,450, 40,451. District of Columbia, U. S. Court of Appeals. Term No. 24. Algernon S. Schafer, petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue. Term No. 25. Edward Schafer, petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue. Term No. 26. Leonard Schafer, petitioner, vs. Guy T. Helvering, Commissioner of Internal Revenue. Petition for writs of certiorari and exhibit thereto. Filed April 6, 1936. Term Nos. 24, O. T., 1936; 25, O. T., 1936; 26, O. T., 1936.

(7886-C)